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SUPREME COURT

ON

PUBLIC INTEREST LITIGATION

CASES AND MATERIALS

The Debate over Original Intent

VOL - III

A LIPS Publications Presentation

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commendation for the same.

92. Finally, we hope that coming years would not see any scam or misuse of power in making allotments of government quarters. The trust which is reposed in this context on high public functionaries would be discharged, we are sure, only to advance the object of providing of suitable condition of work to Government employees so that the Government is run on even keel; and shelter, which is a very pressing necessity of any human being, would not come to be denied if the same is otherwise due to the incumbent. A satisfied bureaucracy is as much necessary, as good political leadership, to deliver goods. The Government of free India have many promises to keep after its tryst with destiny on the midnight of 14th August, 1947. We have no doubt that all the public functionaries would so act that the meeting with destiny really sees the dawn of an year of hope for all.

93. We say no more. Adieu.

SCALE (PIL) 1981-97 929

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH & FAIZAN UDDIN, JJ.

PUBLIC INTEREST LITIGATION — ANCIENT MONUMENTS — TAJ TRAPEZIUM — Varadharajan Committee and NEERI Reports — Issue relating to 292 Industries — Disposing the same, Held,

A. It cannot be disputed that the use of coke/coal by the industries emit pollution in the ambient air. The objective behind this litigation is to stop the pollution while encouraging development of industry. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and the eco-systems have to be protected. The pollution created as a consequence of development must commensurate with the carrying capacity of our eco-systems. (Para 25).

B. The emissions generated by the coke/coal consuming industries are air-pollutants and have damaging effect on The Taj and the people living in the TTZ. The atmospheric pollution in TTZ has to be eliminated at any cost. Not even one per cent chance can be taken when - human life apart - the preservation of a prestigious monument like The Taj is involved. In any case, in view of the precautionary principle as defined by this Court, the environmental measures must anticipate, prevent and attack the cause of environmental degradation, The 'onus of proof' is on an industry to show that its operation with the aid of coke/coal is environmentally benign. It is, rather, proved beyond doubt that the emissions generated by the use of coke/coal by the industries in TTZ are the main polluters of the ambient air. (Para 28).

C. Court issues certain directions:- (1) The industries (292 listed above) shall approach/apply to the GAIL before February 15, 1997 for grant of industrial gas-connection. (2) The industries which are not in a position to obtain gas connections and also the industries which do not wish to obtain gas connections may approach/apply to the Corporation (UPSIDC)/Government before February 28, 1997 for allotment of alternative plots in the

---

Judgment dated 30th December, 1996 in Writ Petition (Civil) No.13381 of 1984. [1997(1) SCALE 61] *industrial estates outside TTZ. (3) The GAIL shall take final decision in respect of all the applications for grant of gas connections by March 31, 1997 and communicate the allotment letters to the individual industries. (4) Those industries which neither apply for gas connection nor for alternative industrial plot shall stop functioning with the aid of coke/coal in the TTZ w.e.f. April 30, 1997. Supply of coke/coal to these industries shall be stopped forthwith. The District Magistrate and the Superintendent of Police shall have this order complied with. (5) The GAIL shall commence supply of gas to the industries by June 30, 1997. As soon as the gas supply to an industry commences, the supply of coke/coal to the said industry shall be stopped with immediate effect. (6) The Corporation/Government shall finally decide and allot alternative plots, before March 31, 1997, to the industries which are seeking relocation. (7) The relocating industries shall set up their respective units in the new industrial estates outside TTZ. The relocating industries shall not function and operate in TTZ beyond December 31, 1997. The closure by December 31, 1997 is unconditional and irrespective of the fact whether the new unit outside TTZ is completely set up or not. (8) The Deputy Commissioner, Agra and the Superintendent (Police), Agra shall effect the closure of all the industries on December 31, 1997 which are to be relocated by that date as directed by us. (9) The U.P. State Government/Corporation shall render all assistance to the industries in the process of relocation. The allotment of plots, construction of factory buildings, etc., and issuance of any licence/permissions, etc., shall be expedited and granted on priority basis. (10) In order to facilitate shifting of industries from TTZ, the State Government and all other authorities shall set up unified single agency consisting of all the Departments concerned to act as a nodal agency to sort out all the problems of such industries. The single window facility shall be set up by the U.P. State Government within one month from today. The Registry shall communicate this direction separately to the Chief Secretary, Secretary (Industries) and Chairman/Managing Director, UPSIDC along with a copy of this judgment. We make it clear that no further time shall be allowed to set up the single window facility. (11) The State Government shall frame a scheme for the use of the land which would become available on account of shifting/relocation of the industries before June 30, 1997. The State Government may seek guidance in this respect from the order of this Court dated May 10, 1996 in I. A. No.22 in Writ Petition (Civil) No. 4677 of 1985. (12) The shifting industries on the relocation in the new industrial estates shall be given incentives in terms of the provisions of the Agra Master Plan and also the incentives which are normally extended to new industries in new industrial estates. (13) The workmen employed in the above-mentioned 292 industries shall be entitled to the rights and benefits as indicated hereunder:- (a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment. (b) The period between the closure of the industry in Agra and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service. (c) All those workmen who agree to shift with the industry shall be given one year's wages as 'shifting bonus' to help them settle at the new location. The said bonus shall be paid before January 31, 1998. (d) The workmen employed in the industries who do not intend to be relocated/obtain natural gas and opt for closure, shall be deemed to have been retrenched by May 31, 1997, provided they have been in continuous service (as defined in Section 25-B of the Industrial*

Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act. These workmen shall also be paid, in addition, six years wages as additional compensation. (e) The compensation payable to the workmen in terms of this Judgment shall be paid by the management within two months of the retrenchment. (f) The gratuity amount payable to any workman shall be paid in addition. (Para 30).

Referred: Vellore Citizens Welfare Forum vs Union of India & Ors., 1996 (6) SCALE 194.

Kuldip Singh, J.— Taj Mahal - The Taj - is the "King Emperor" amongst the World - Wonders. The Taj is the final achievement and acme of the Mughal Art. It represents the most refined aesthetic values. It is a fantasy-like grandeur. It is the perfect culmination and artistic interplay of the architects' skill and the jewellers' inspiration. The marble-in-lay walls of the Taj are amongst the most outstanding examples of decorative workmanship. The elegant symmetry of its exterior and the aerial grace of its domes and minarets impress the beholder in a manner never to be forgotten. It stands out as one of the most priceless national monument, of surpassing beauty and worth, a glorious tribute to man's achievement in Architecture and Engineering.

2. Lord Roberts in his work "Forty one years in India" describes the Taj as under:-

> "Neither words nor pencil could give to the most imaginative reader the slightest idea of all the satisfying beauty and purity of this glorious conception. To those who have not seen it, I would say, - Go to India; the Taj alone is well worth the journey."

3. A poet describes the Taj as under:-

> "It is too pure, too holy to be the work of human hands. Angels must have brought it from heaven and a glass case should be thrown over it to preserve it from each breath of air."

Sammuel Smith in his Book about The Taj explains the impact as under:-

> "We stood spell-bound for a few minutes at this lovely apparition; it hardly seems of the earth. It is more like a dream of Celestial beauty, no words can describe it. We felt that all previous sights were damned in comparison. No such effect is produced by the first view of St.Peter's or Milan or Cologne Cathedrals. They are all majestic, but this is enchantment itself. So perfect is its form that all other structures seem clumsy."

4. The Taj is threatened with deterioration and damage not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction. A private sector preservation organisation called "World Monuments Fund" (American Express Company) has published a list of 100 most endangered sites (1996) in the World. The Taj has been included in the list by stating as under:-

> "*The Taj Mahal - Agra - India*"
>
> The Taj Mahal, Marble Tomb for Mumtaz Mahal, wife of emperor Shah Jahan, is considered the epitome of Mughal monumental domed tombs set in a garden. The environment of Agra is today beset with problems relating to the inadequacy of its urban infrastructure for transportation, water and electricity. The densest pollution near the Taj Mahal is caused by residential fuel combustion, diesel trains and buses, and back-up generators. Construction of the proposed Agra Ring Road and Bypass that would divert the estimated daily 6,50,000 tons

> of trans-India truck traffic awaits financing. Strict controls on industrial pollution established in 1982 are being intensively enforced following a 1993 Supreme Court Order. The Asian Development Bank's proposed $300 million loan to the Indian government to finance infrastructure improvements would provide the opportunity to solve the chronic problems. Agra contains three World Heritage Sites, including the Taj Mahal."

According to the petitioner, the foundries, chemical/hazardous industries and the refinery at Mathura are the major sources of damage to The Taj. The sulphur dioxide emitted by the Mathura Refinery and the industries when combined with Oxygen - with the aid of moisture - in the atmosphere forms sulphuric acid called "Acid rain" which has a corroding effect on the gleaming white marble. Industrial/Refinery emissions, brick-kilns, vehicular traffic and generator-sets are primarily responsible for polluting the ambient air around Taj Trapezium (TTZ). The petition states that the white marble has yellowed and blackened in places. It is inside The Taj that the decay is more apparent. Yellow pallor pervades the entire monument. In places the yellow hue is magnified by ugly brown and black spots. Fungal deterioration is worst in the inner chamber where the original graves of Shah-Jahan and Mumtaz Mahal lie. According to the petitioner The Taj - a monument of international repute - is on its way to degradation due to atmospheric pollution and it is imperative that preventive steps are taken and soon. The petitioner has finally sought appropriate directions to the authorities concerned to take immediate steps to stop air pollution in the TTZ and save The Taj.

5. The Report of the Expert Committee called "Report on Environmental Impact of Mathura Refinery" (Varadharajan Committee) published by the Government of India in 1978 has been annexed along with the writ petition. Para 4.1 of the conclusions therein is as under:-

> "There is substantial level of pollution of sulphur dioxide and particulate matter in the Agra region. The possible sources are all coal users consisting of two Power Plants, a number of small industries mainly foundries (approximately 250) and a Railway Shunting Yard. As far as suspended particulate matters are concerned, because of use of coal, contribution will be substantial. Even though the total amount of emission of sulphur dioxide from these sources may be small, on account of their proximity to the monuments, their contribution to the air quality of the zone will be considerably high."

Varadharajan Committee made, among others, the following recommendations:-

> "Steps may be taken to ensure that no new industry including small industries or other units which can cause pollution are located north-west of the Taj Mahal............*Efforts may be made to relocate the existing small industries, particularly the foundries, in an area south east of Agra beyond the Taj Mahal so that emissions from these industries will not be in the direction of the monuments*.............Similar considerations may apply to large industries such as Fertilizer & Petrochemicals. Such industries which are likely to cause environmental pollution may not be located in the neighbourhood of the refinery. The Committee further recommends that no large industry in the Agra region and its neighbourhood be established without conducting appropriate detailed studies to assess the environmental effect of such industries on the monuments. Location

> should be so chosen as to exclude any increase in environmental pollution in the area.........*The Committee wishes to record its deep concern regarding the existing level of pollution in Agra.* It recommends that an appropriate authority be created which could monitor emissions by industries as well as the air quality at Agra on a continuous basis. This authority should be vested with powers to direct industries causing pollution to limit the level of emission and specify such measures as are necessary to reduce the emission whenever the pollutant level at the monuments exceeds acceptable limits. The Committee particularly desires that recommendations made in regard to reduction of existing pollution levels at Agra should be converted to a time-bound programme and should be implemented with utmost speed.........The Committee also recommends that studies should be undertaken by competent agencies to explore the possibility of protecting the monuments by measures such as provision of a green belt around Agra in the region between Mathura and Agra.........Even though assurances have been obtained from IOC that adequate precautions would be taken to contain the pollution on account of using coal in the power plant, the Committee is of the opinion that till such time this problem is studied in depth and suitable technologies have been found to be satisfactorily in use elsewhere, the use of coal in the refinery power plant should be deferred."

The Central Board for the Prevention and Control of Water Pollution, New Delhi, published a report (Control of Urban Pollution Series CUPS/7/1981-82) under the title "Inventory and Assessment of Pollution Emission in and Around Agra-Mathura Region (Abridged)". The relevant findings are as under:-

> "Industrial activities which are in operation in Agra city and its outskirts could be categorized as (i) Ferrous Metal Casting using Cupolas (Foundry); (ii) Ferro-alloy and Non-Ferrous Castings using Crucibles, Rotary Furnaces etc.; (iii) Rubber Processing; (iv) Lime Oxidation and Pulverising; (v) Engineering; (vi) Chemical; and (vii) Brick and Refractory Kilns (Table 4-1).............The contribution of sulphur dioxide through emission primarily from the combustion from the fuels comprising hard coke, steam coal, wood and fuel oil is estimated as 3.64 tonnes per day from industrial activities in the Agra City and its outskirts (Table 5-3). The vehicular contribution as estimated from traffic census in 6 road crossings is only 65 kg a day or 0.065 tonnes a day and should be considered negligible for the present (Para 7.4). ....The Contribution of sulphur dioxide from the 5 recognised distinct discrete sources in tonnes per day are 2.28, 2.28, 1.36, 1.21 and 0.065 from (i) two thermal power stations, (ii) foundries, (iii) other industries in Agra, (iv) two railway marshalling yards and (v) vehicular traffic respectively. Omitting contribution from vehicular traffic as because it is considered negligible, the relative contributions from the other 4 distinct sources are 32, 32, 19 and 16.9 per cent. With the elimination of the first and the fourth sources-by closing down the two thermal power station and replacing coal fired steam engines by diesel engines in the two railway marshalling yards-about 50 per cent (48.9 to be exact) cut down of sulphur dioxide emission is expected."

The National Environment Engineering

Research Institute (NEERI) gave "Over-view report" regarding status of air pollution around The Taj in 1990. Relevant part of the report is as under:-

> "The sources of pollution, including small and medium scale industrial units, are scattered all around Taj Mahal. High air pollution load is thus pumped into the Taj air-shed. Sudden rises in concentration level are often recorded in all directions in gaseous as well as particulate pollutant depending upon the local micro climatic conditions. ....On four occasions during the five year air quality monitoring, the 4 hrly average values of $S0_2$ at Taj Mahal were observed to be higher than 300 ug/m3, i.e. 10 folds of the promulgated CPCB standard of 30 ug/m3 for sensitive areas. The values exceeded even the standard of 120 ug/m3 set for industrial zones. Statistical analysis of the recorded data indicate that 40% (cumulative percentage level) has crossed the standard set for sensitive receptors/zones.....The SPM levels at Taj Mahal were invariably high (more than 200 ug/m3) and exceeded the national ambient air quality standard of 100 ug/m3 for SPM for sensitive locations barring a few days in monsoon months. ....Another study during 1985-87 brought to fore that the overall status of the ambient air quality within the trapezium has significantly deteriorated over this period."

The impact of the air quality on The Taj has been stated as under:-

> "The rapid industrial development of Agra - Mathura region has resulted in acidic emissions into the atmosphere at an alarming rate. This causes serious concern on the well being of Taj Mahal. ....The gaseous pollutants being acidic in nature, significantly impact both the biotic as well as the abiotic components of the ecosystem like plants and building material like marble and red stone".

This Court on January 8, 1993 passed the following order:-

> "We have heard Mr. M.C. Mehta, the petitioner in person. According to him, the sources of pollution in Agra region as per the report of Central Pollution Control Board are iron foundries, Ferro-alloyed industries, rubber processing, lime processing, engineering, chemical industry, brick refractory and vehicles. He further states that distant sources of pollution are the Mathura Refinery and Ferozabad Glass Industry. It is necessary to have a detailed survey done of the area to find out the actual industries and foundries which are working in the region. We direct the U.P. Pollution Control Board to get a survey done of the area and prepare a list of all the industries and foundries which are the sources of pollution in the area. The Pollution Board after having the survey done shall issue notices to all the foundries and industries in that region to satisfy the Board that necessary anti-pollution measures have been undertaken by the said industries/foundries. The Pollution Board after doing this exercise shall submit a report to this Court on or before May 5, 1993. A copy of this order be sent to the Chairman and Secretary, U.P. Pollution Control Board for compliance and report as directed."

Pursuant to the above quoted order the U.P. Pollution Control Board (the Board) filed an affidavit dated May 3, 1993. It is stated in the affidavit that as per survey report furnished by the Regional Office of the U.P. Board the industries of Agra Region were categorised as under:-

	Nature of Industry	*Number of Industry*
(I)	Foundries	168
(II)	Rubber Factories	20
(III)	Engineering Industries	46
(IV)	Chemical & other Industries	55

(V)	Lime Kilns	03
(VI)	Refinery (Situated at Mathura)	01
(VII)	Glass Industries (situated at Firozabad)	49
(VIII)	Brick Refractories & Poultries	09
(IX)	Bangle Industries (situated at Firozabad)	120
(X)	Block Glass Industries	40
	TOTAL:	511

The affidavit further states that notices were issued to the aforesaid 511 industries/foundries as directed by this Court. Although Mathura Refinery is included in the list of 511 industries but we are not dealing with the refinery in this judgment. The Mathura Refinery is being dealt with separately. All the foundries/industries are represented before us through the National Chamber of Industries and Commerce, U.P., Agra, U.P. Chamber of Commerce and the Glass Industries Syndicate. Some of the individual industries have also been represented through their learned counsel.

6. This Court considered the affidavit filed by the Board and passed the following order on May 5, 1993:-

> "Pursuant to this Court's order dt. January 8, 1993, an affidavit has been filed by the U.P. Pollution Control Board. It has been stated therein that in terms of this Court's order dated January 8, 1993, notices have been issued by the Board to 511 industries in Agra region. The names and addresses of the said industries have been enclosed along with the affidavit. The industries are required to file their replies to the notices by May 5, 1993 (today). ....We direct the U.P. Pollution Control Board to issue a public notice by getting the same published in two local newspapers and two national newspapers calling upon all the 511 industries to instal anti-pollution mechanism/effluent treatment plants if they have not already done so. All the 511 industries be called upon to file replies to the notices already issued by the Board within further time of eight weeks from the date of the publication of the notices in the newspapers. This publication shall be done within two weeks from today. After the replies from the industries are received and processed by the Board, the Board may, if it so desires, inspect any of the industries in order to find out the correctness of the replies filed by the Industries. The matter be listed on August 10, 1993."

Pursuant to this Court's order (quoted above) the Board filed affidavit dated August 5, 1993 wherein it is stated that public notice was published in two local newspapers of Agra on May 17, 1993 and two National Newspapers on May 18, 1993 calling upon the industries to file their replies during the extended time. The affidavit states that all the listed industries were polluting industries and 507 out of them, had not even installed any air pollution control device. The 212 industries who did not respond to the notice and failed to take any step towards installing the pollution control devices were closed by the order dated August 27, 1993 with immediate effect. The closure order was to operate till the time necessary pollution control devices were to be set up by the industries concerned.

7. Meanwhile, NEERI submitted its report dated October 16/18, 1993 regarding sulphur dioxide emission control measures at Mathura Refinery. Since the Mathura Refinery matter is being dealt with separately it is not necessary to go into the details of the report. Suffice it to say that apart from short term strategy, the NEERI recommended the use of natural gas, setting up of Hydro-cracking unit, improved sulphur Recovery Unit, Chemo-biochemical Sulphur Recovery and the setting up of green belt around the refinery. The NEERI report examined in

detail the decay mechanism and status of The Taj marble. How the deterioration of marble occurs, is stated by NEERI as under:-

> "The deterioration of marble occurs in two modes. In the first mode, weathering takes place if the marble is sheltered under domes and cornices, and protected from direct impact of rain. Here a crust is formed, which after some period, exfoliates due to mechanical stresses. In case of marble exposed to rain, gradual reduction of material occurs, as the reaction products are washed away by rainfall and fresh marble is exposed. The crusts are formed due to Sulphur Dioxide, but the cumulative effects of all pollutants are more damaging. It is also observed that trace metals present in fly ash and suspended particulate matter, e.g. Manganese, Iron and Vanadium act as catalysts for oxidation of Sulphur Dioxide, and in turn enhance degradation of marble calcite to gypsum."

The NEERI report indicates the air-pollution effect on The Taj in the following words:-

> "The Taj Mahal marble samples analysed by NEERI in 1993 reveal that the black soot on certain protected surfaces contains 0.6% Calcium and traces of Sulphate. X-ray diffraction studies indicated that soot and quartz (Silicon Dioxide) are the major constituents of the black coating at Taj Mahal (Lal and Holden, ES & T, April 1981). The origin of soot can be traced back to the fuel consumption around the sensitive receptor, while quartz is derived from geocrustal origin and causes surface abrasions. Soot in itself is not chemically destructive, but with tar it acts as a soiling agent. Absorption of the acidic gases is enhanced due to the presence of soot/smoky matter resulting in long term effects. Further, the presence of soot reduces the aesthetic value of the monument. Ambient air around Taj Mahal is polluted primarily from point/line sources and has adverse impacts on building material by alternation of marble and sandstone structures at micro-crystalline level. The earlier studies have revealed that the concentrations of gaseous pollutants and SPM (predominantly soot and carbon particles) are relatively high during winter months due to the frequent inversion conditions restricting vertical dispersion. During monsoon seasons, suspended particles are washed away and this cycle of pollutant built-up and subsequent removal continues exposing fresh surface of the monument to the pollutants."

On November 19, 1993, this Court passed the following order:-

> "On November 5, 1993, we suggested to Mr. N.N. Goswami, learned senior advocate, appearing on behalf of the Union of India to find out the possibility of providing Gas as a fuel to the Glass Industries and the Foundries around Agra. Mr. Goswamy states that he is already in touch with the authorities concerned and needs little more time. We have given him time till November 26, 1993. He must file concrete proposal before the next date of hearing. Meanwhile, we also issue Notice to the Secretary, Ministry of Petroleum, Govt. of India and the Chairman, Gas Authority of India, returnable on November 26, 1993."

This Court on November 26, 1993 examined the affidavit filed by the Gas Authority of India Ltd. (GAIL) regarding supply of natural gas to the industries operating in TTZ and passed the following order:-

> "Pursuant to this Court's order dated November 19, 1993, Mr. R.P. Sharma, General Manager, Marketing and Planning, Gas Authority of India Ltd. has

> filed an affidavit dated November 25, 1993. Mr. Sharma is also present in Court. It has been stated in the affidavit and also orally by Mr. Sharma that without undertaking the detailed survey with regard to the assessment of demand and other technical requirements it would not be possible to proceed further in this matter.
>
> Dr. Khanna, Director, NEERI states that some sort of survey in this respect has already been done by the State of U.P. He further states that so far as Mathura Refinery is concerned, NEERI has done the survey under the directions of this Court. According to him, the work of doing further survey on behalf of the Gas Authority of India Ltd. can be undertaken by NEERI if the terms are suitable. Mr. R.P. Sharma, General Manager, Gas Authority of India Ltd. states that the Gas Authority shall send their terms of reference to the NEERI within ten days. Let this be done. Dr. Khanna states that they will respond to the terms within a week thereafter.
>
> Mr. Pradeep Misra, learned counsel appearing on behalf of the U.P. State Pollution Control Board states that whatever data in this matter is available with the State of U.P. shall be supplied to NEERI within a week.
>
> To be listed on December 17, 1993. We request Dr. Khanna, Director, NEERI and Mr. R.P. Sharma, General Manager, Gas Authority of India Ltd. (or any other officer on his behalf) to be present in Court on December 17, 1993."

The NEERI in its project proposal dated December 19, 1993 regarding feasibility of utilisation of natural gas as replacement of conventional fuel in the industrial sectors of Agra, Mathura and Firozabad stated as under:-

> "The Ministry of Environment and Forests (MEF) retained the National Environmental Engineering Research Institute (NEERI) in December 1992 to redefine the Taj Trapezium. The study was completed in July 1993. Stringent pollution control regulations have been stipulated by the Government of India but the industries within Agra area are not meeting the prescribed emission standards. One of the reasons is that the industries use coal and coke for their fuel requirements. Amongst the options proposed in the Air Environment Management Plan in Taj Trapezium report, NEERI has suggested change over to cleaner fuel like ONG for mitigation of air pollution in the region. As per the directives of the Hon'ble Supreme Court of India, NEERI proposed a study on techno-economic feasibility of utilisation of compressed Natural Gas (CNG) as a replacement of solid/liquid fuels (e.g. Coal, FO, LSHS etc.) in the industrial sectors of Agra, Mathura and Firozabad region, based on the Terms of Reference formulated by the Gas Authority of India Ltd. (GAIL).
>
> The existing HBJ pipeline laid by GAIL for transmission and distribution of CNG from the Western Offshore Region passing through Gujarat, Madhya Pradesh, Rajasthan, Uttar Pradesh, Delhi and Haryana can be tapped to serve this sensitive area. Auraiya in Uttar Pradesh is the nearest possible tapping point which is at an approximate distance of 170 kilometers from Agra. Presently the total availability of CNG ex-Hazira is of the order of 20 MMSCMD, and is expected to increase to 38-39 MMSCMD in 1998-99 as projected by GAIL. Based on the existing energy demand, NEERI has projected approximately 1.00 MMSCMD CNG requirements for Agra, Mathura and Firozabad region.
>
> The price of CNG at Auraiya (exclusive

> of taxes) range from Rs.2500-2700/1000 m3 which will be further altered by Government of India after 1995 (GAIL's projection)."

8. This Court by the order dated February 11, 1994 asked the NEERI to examine the possibility of using propane or any other safe fuel instead of coal/coke by the industries in the TTZ. This Court also directed the UP State Industrial Development Corporation (the Corporation) to locate sufficient areas outside the TTZ to relocate the industries. The operative part of the order is as under:-

> "We requested Mr. V.R. Reddy, learned Additional Solicitor General on January 14, 1994 to have discussion with the concerned authorities and assist us in probing the possibility of providing some safe fuel to the foundries and other industries situated in the Taj trapezium. We are thankful to Mr. Reddy for doing good job and placing before us various suggestions in that direction. Mr. Reddy has suggested that NEERI be asked to examine the possible effects of the use of Propane as a safe fuel from the point of view of atmospheric pollution. We accept the suggestion and request Dr. P. Khanna to examine the feasibility of Propane as a possible alternative to the present fuel which is being used by the foundries and other industries in the Taj trapezium. This may be done within 2 weeks from today. Copy of this order be sent to the Director, NEERI within 2 days from today. Government of India, Ministry of Environment shall pay the charges of NEERI in this respect.
>
> We further direct the U.P. State Industrial Development Corporation through its Managing Director to locate sufficient landed area possibly outside the Taj trapezium where the foundries and other industries located within the Taj trapezium can be ultimately shifted. The Corporation shall also indicate the various incentives which the Government/U.P.S.I.D.C. might offer to the shifting industries. The Managing Director of the U.P.S.I.D.C. shall file an affidavit before this Court on or before March 4, 1994 indicating the steps taken by the Corporation in this respect. We also direct the Gas Authority of India to indicate the price of Propane which they might have to ultimately supply to the industries within the Taj trapezium or the industries which are to be shifted from within the Taj trapezium. This may be done within 4 weeks from today. We place the statement of the outcome of discussion held by Mr. Reddy with the concerned authorities on record."

This Court on February 25, 1994 examined the issue relating to supply of natural gas to the Mathura Refinery and the industries in the TTZ and passed the following order:-

> "With a view to save time and Red-Tape we are of the view that it would be useful to have direct talk with the highest authorities who can take instant decision in the matter. We, therefore, request the Chairman of the Oil and Natural Gas Commission, the Chairman of the Indian Oil Corporation and the Chairman of the Gas Authority of India to be personally present in this Court on 8.3.1994 at 2.00 PM.
>
> We further direct the Secretary, Ministry of Petroleum, to depute a responsible officer to be present in the Court on 8.3.94 at 2 PM."

The Corporation filed affidavit dated March 3, 1994 indicating the location/area of various industrial estates which were available for relocation of the industries from TTZ. After examining the contents of the affidavit, this Court on March 4, 1994 passed the following order:-

> "Mr. K.K. Venugopal, learned senior

> advocate appears for the U.P. State Industrial Corporation Limited. The Corporation has filed an affidavit wherein it is stated that the Corporation has 220 acres of developed land in industrial area, Kosi (Kotwa) where 151 plots are available for immediate allotment. It is further stated that undeveloped land measuring 330 acres is available in Salimpur in Aligarh District. Both these places are about 60/65 Kms. away from Agra and are outside the Taj environment Trapezium. It is also stated that 85 acres of undeveloped land is also available at Etah, which is about 80 Kms. away from Agra.
>
> Before we issue any directions regarding the development of area or allotment of land to various industries, it is necessary to know the exact number of air polluting industries which are operating within the Taj Trapezium which are to be shifted outside the trapezium. Mr. Pradeep Misra, learned counsel for the U.P. State Pollution Control Board fairly states that he would direct the Board Secretariat to prepare a list on the basis of their record and survey, and submit the same in this Court within a week from today.
>
> Mr. S.K. Jain and Mr. Sanjay Parikh, Advocates have been appearing for various industries. They also undertake to get the information in this respect and give a list to the U.P. Pollution Control Board. We further direct the Secretary, Department of Industries, Government of Uttar Pradesh, to file/cause to file a list of all the air polluting industries within the Taj Trapezium in this Court within a week from today."

On March 8, 1994 the Chairmen, General Managers and other officers of various commissions/corporations and departments were present in Court. After hearing them, the Court passed the following order:-

> "Pursuant to this Court's order dated February 25, 1994, Shri S.K. Manglik, Chairman and Managing Director, Oil and Natural Gas Commission along with Shri Atul Chandra, Group General Manager (Operation), Shri K.K. Kapur, Chairman and Managing Director, Gas Authority of India along with Shri R.P. Sharma, General Manager (Marketing) Shri B.K. Bakshi, Chairman and Managing Director, Indian Oil Corporation along with Shri A.P. Choudhary and Shri S.R. Shah, Joint Secretary, Ministry of Petroleum, are present in Court. We place on record our appreciation for having responded to our request.
>
> We have discussed our view point with Shri Manglik, Shri Kapur, Shri Shah and Shri Bakshi. We have requested them to file in this Court a note each with regard to the discussion we have had with them in the Court. This may be done within five days."

When the matter came up for consideration on March 31, 1994, this Court while examining the question of relocating the industries, passed the following order:-

> "......Mr. Venugopal, learned senior counsel appearing for the UPSIDC states that the UPSIDC would examine the demand of each of the industry and thereafter locate the requisite area outside the Taj Trapezium for shifting these industries. We propose to issue public/individual notices inviting objections/suggestions from the industries concerned. Mr. Venugopal states that he would prepare & file the format of the said notice. This matter to come up for further consideration on 8.4.94."

This Court on April 11, 1994 examined the NEERI report dated July, 1993. The Ministry of Environment and Forests retained NEERI in January, 1993 to undertake an extensive study with a view to redefining the TTZ (Taj-

Trapezium) and realienating the area management environmental plan. The NEERI submitted its final report to the Government of India in July, 1993. A copy of the report was placed on the record of this Court. The report was prepared under the guidance of Dr. P. Khanna, Director, NEERI and the project leaders were Dr. A.N. Aggarwal and Dr. Mrs. Thakra. In addition, there was a team of about 30 scientists participating in the project. The NEERI in its report has found as a fact that the industries in the TTZ (districts of Agra, Mathura, Ferozabad and Bharatpur) are the main source of pollution causing damage to the Taj. The NEERI has suggested various measures for controlling the pollution in the area. One of the suggestions made is the shifting of the polluting industries to an area outside the TTZ. The other notable recommendation is the setting up of the Green Belt Development Plan around the Taj to save it from the effect of pollution. Under the directions of this Court, the green belt as suggested by NEERI is already in the process of being planted/grown around The Taj. The matter is being processed separately.

9. This Court on April 11, 1994 after hearing learned counsel for the parties, passed the order indicating that as a first phase the industries situated in Agra be relocated out of TTZ. While the industries were being heard on the issue of relocation, this Court on April 29, 1994 passed the following order:-

> "......Efforts are being made to free the prestigious Taj from pollution, if there is any, because of the industries located in and around Agra. It is further clear from our order that the basis of the action initiated by this Court is the NEERI's report which was submitted to the Government of India in July, 1993.
>
> We are of the view that it would be in the interest of justice to have another investigation/report from a reputed technical/Engineering authority, Ministry of Environment and Forests, Government of India may examine this aspect and appoint an expert authority (from India or abroad) to undertake the survey of the Taj Trapezium Environmental Area and make a report regarding the source of pollution in the Trapezium and the measures to be adopted to control the same. The authority can also identify the polluting industries in the Taj Trapezium. We, therefore, request Mr. Kamal Nath, Minister Incharge, Department of Environment and Forests, to personally look into this matter and identify the authority who is to be entrusted with this job. This must be done within three weeks from the receipt of this order. A responsible Officer of the Ministry shall file an affidavit in this Court within two weeks indicating the progress made by the Ministry in this respect. Registry to send copy of the above quoted order to the Secretary, Ministry of Environment and Forests and also to Mr. Kamal Nath, personally, within three days from today."

Pursuant to above quoted order, the Government of India, Ministry of Environment and Forests, by the order dated May 18, 1994 appointed an expert committee under the chairmanship of Dr. S. Varadharajan.

10. Meanwhile the India Oil Corporation placed on record its report on the feasibility study regarding the use of safe alternate fuel by the Mathura Refinery. The report suggested the use of natural gas as the most optimum fuel. Once the natural gas is brought to Mathura there would be no difficulty in providing the same to the other industries in TTZ and outside TTZ. This Court on August 5, 1994 passed the following order:-

> "Pursuant to this Court's order dated 31.3.1994 the Indian Oil Corporation has placed on record the final report on the

feasibility study for using alternate fuel at Mathura Refinery. In the beginning of the Report summary along with Indian Oil Corporation's experience on the subject is given. The conclusion of the summary is as under:-

> "Out of the various alternate fuels (viz Natural Gas, Propane, LPG & Naphtha) studied for use in process fired heaters and boilers in Mathura Refinery, Natural Gas is the most optimum fuel in view of wide international experience, safety & minimum implementation time frame. Other alternate fuels Propane, LPG & Naphtha are valuable salable products and therefore scarcely used in the world as a fuel for process fired heaters. Liquid Naphtha forms vapour clouds from possible leakages from burner flanges on underside of fired heater. In view of this, it may not be prudent to recommend use of Naphtha in large size heaters (e.g. AVU furnaces) & boilers of Mathura Refinery with air preheaters."

The feasibility study report specifically suggests that natural gas is the most economical and appropriate alternate-fuel for the Mathura Refinery. The question for consideration, is : By what method/route the natural gas is to reach Mathura and made available to the Refinery at Agra. The summary of the report in para 4.4 in this respect states as under:-

> "A new loop line of 36 inch diameter from Bijapur to Dadri is being laid by Gas Authority of India Limited (GAIL) under the Gas Rehabilitation and Expansion Project and is scheduled to be commissioned by June 1996. Supply of Natural Gas to Mathura Refinery will require laying a new 10 inch diameter 13 km long branch line tapped off from the above expansion project at Shahpur. The proposed branch line to Mathura Refinery can be completed within the time schedule of commissioning the new loop line as above."
>
> Mr. M.C. Mehta, the petitioner in-person herein has, however, suggested that instead of laying the pipe line from Bijapur to Dadri via Mathura, it would be economical and time saving exercise to lay down the lines from Auria or Babrala to Mathura. According to him, this would be in conformity to the Report already submitted by NEERI in this respect. He has further submitted that if the pipe-line is drawn from Auria, it would also serve the industries at Ferozabad and Agra. Learned counsel for the Indian Oil Corporation states that he would place the suggestion before the experts of the Corporation and assist this Court on 8.8.1994. He may do so. Learned counsel for the Corporation may also ask a responsible officer, who can explain the whole situation to the Court, to be present in Court on 8.8.1994 at 2.00 p.m."

The matter came up for further consideration on August 8, 1994 when this Court passed the following order:-

> "Mr. B.B. Chakravarty, General Manager, Safety and Environment Protection, Indian Oil Corporation, is present before us. According to him the pipe line suggested by Mr. M.C. Mehta (from Auria to Mathura or from Babrala to Mathura) is not feasible. According to him the scheme of laying down the pipe line from Bijapur to Dadri via Mathura has already been sanctioned and is being implemented. He further states that apart from supplying gas to Dadri, the line when laid down, shall also be in a position to carry the supplies required for the Mathura Refinery.

> In the final report dated July 12, 1994, submitted by the Indian Oil Corporation it has been stated that the new pipe line of 36" diameter from Babrala to Dadri is being laid under the Gas Rehabilitation and Expansion Project and is scheduled to be commissioned by June, 1996. It is further stated that a new 10" diameter 13 K.M. long branch line tapped off from the above expansion project would also be completed within the above time schedule. We direct the Gas Authority of India to file an affidavit through some responsible officer, within two weeks from the receipt of this order, showing the progress made till date in the project of laying down the pipe-line from Babrala to Dadri. The affidavit shall also state as to whether it is possible to prepone the date of commissioning of the project from June, 1996 to December, 1995.
>
> Copy of the order be sent to Gas Authority of India and the Indian Oil Corporation."

Pursuant to this Court's order dated October 21, 1994 the GAIL filed an affidavit indicating the progress regarding the laying of pipe-line for the supply of natural gas to Mathura Refinery and the industries in TTZ. It is stated in the affidavit that all efforts were being made to complete the project by December, 1996.

11. Vardharajan committee submitted its report regarding preservation of Taj Mahal and Agra monuments in two volumes. After hearing learned counsel for the parties, this Court on August 3, 1995 passed the following order:-

> "Vardharajan Committee appointed by the Ministry of Environment and Forests, Government of India has submitted its report regarding preservation of Taj Mahal and Agra Monuments in two volumes. Mr. M.C. Mehta and Mr. Krishan Mahajan have taken us through some parts of the report. There are now two major reports on the subject. There is a NEERI report to which we have referred to in our various orders from time to time. NEERI report was submitted sometime in July 1993. In its report, NEERI suggested that in order to preserve Taj it is necessary to re-locate various industries located in Taj Trapezium. The Vardharajan Committee Report now received also suggests the re-location of the industries situated in Taj Trapezium. The Vardharajan Committee has also given various other useful suggestions for improving the atmospheric environmental quality around Taj and also for preservation of Taj Mahal. It is the primary duty of the Government of India, Ministry of Environment and Forests to safeguard Taj Mahal from getting deteriorated. We direct the Ministry through Secretary, Ministry of Environment and Forests to examine the NEERI report and also the Vardharajan Report and indicate in positive terms the measures which the Ministry is intending to take to preserve the Taj Mahal.
>
> We are further prima facie of the view that in view of the two reports (NEERI & Vardharajan), the polluting industries in Taj Trapezium shall have to be re-located. It cannot be done without there being positive assistance from the Ministry of Environment & Forests, Government of India and the State of Uttar Pradesh. We direct these two authorities to come out with re-allocation scheme so that all the polluting industries situated in Taj Trapezium are shifted to the new place in a phased manner. Keeping in view the importance and urgency of the matter we request Mr. Kamal Nath, the Minister of Environment and Forests to personally look into the matter and have the

> response of the Ministry and the re-allocation scheme prepared within four weeks from the receipt of this order.
>
> An affidavit of the Secretary, Ministry of Environment & Forests shall be filed in this Court within a period of four weeks."

Pursuant to the above quoted order, Additional Secretary in the National River Conservation Directorate, Ministry of Environment and Forests, New Delhi filed an affidavit before this Court. After examining the affidavit, this Court passed the following order:-

> "Pursuant to the above quoted order an affidavit dated 3.8.95 has been filed by Shri Vishwanath Anand, Additional Secretary in the National River Conservation Directorate, Ministry of Environment and Forests, New Delhi. Various aspects have been dealt with in the said affidavit. So far the question of re-location of the industries from Taj Trapezium is concerned no positive stand has been indicated by the Ministry of Environment, Government of India. As indicated by us in our order quoted above two expert reports are before the Government of India. `NEERI' gave its report as back as July, 1993 and Varadharajan Committee Report was submitted to the Government in April, 1995. Although this Court was prima facie of the view that the polluting industries in Taj Trapezium would have to be re-located but this Court finally left it to the Ministry of Environment and Forests to examine the two reports and give its response to this Court. We personally requested Mr. Kamal Nath the then Minister of Environment and Forests to examine the matter and have the scheme for re-location of industries from Taj Trapezium framed within the time indicated by this Court. Nothing positive has come before us. We have today discussed this aspect at length with the learned Solicitor General Mr. Dipankar Gupta. Once again we request Mr. Rajesh Pilot, Minister of Environment and Forests, Government of India to have the two reports examined expeditiously. It is of utmost importance that the pollution in the Taj Trapezium be controlled. We want positive response from the Ministry."

12. There being no helpful response from the Government of India, we finally heard the matter at length for several days and are disposing of the issues raised before us by this judgment.

13. This Court on March 14, 1996 directed the GAIL, Indian Oil Corporation and the UP State Industrial Development Corporation to indicate the industrial areas outside the TTZ which would be connected with the gas supply net-work. The order passed was as under:-

> "Mr. Reddy, the learned Additional Solicitor General after consulting Mr. C.P. Jain, the Chief Environmental Manager, New Delhi has stated that mechanical process for bringing gas near Mathura Refinery shall be completed by December, 1996. He further stated that the commissioning would be done by January, 1997. We have on record the undertaking of the Gas Authority of India that while the pipe line is being constructed the branch pipe line for supplying gas to Mathura Refinery and to the industries shall also be completed side by side. We direct the Gas Authority of India, Indian Oil Corporation and the U.P. State Industrial Development Corporation to file an affidavit in this Court within two weeks of the receipt of this order indicating as to which of the industrial areas outside the Taj Trapezium would be connected with the gas supply net work. We may mention that the PSCDC has already filed

> affidavit in this Court indicating various industrial Estates which can be developed outside the Taj Trapezium."

Pursuant to the above quoted order of this Court, the General Manager, GAIL filed affidavit dated April 2, 1996. After examining the contents of the affidavit, this Court on April 10, 1996 passed the following order:-

> "Pursuant to this Court's order dated March 14, 1996 Mr. P.C. Gupta, General Manager (Civil), Gas Authority of India has filed affidavit dated April 2, 1996. It is stated in the affidavit that the Ministry of Petroleum and Natural Gas has already allocated 0.60 MMSCMD for distribution to the industrial units in Agra and Ferozabad. It is stated that as per the time schedule already filed in this Court, the two pipe lines shall be completed by December, 1996. It is further stated that the quantity of gas as mentioned above is only for the purposes of supplying the same to the industries located within the Taj Trapezium. We have no doubt that while laying down the supply line within the city of Agra, the safety of Taj and also the people living in the city of Agra shall have to be taken into consideration. We are told that expertise in this respect is available with the GAIL. If necessary, the opinion of NEERI, which has been associated by this Court in Taj Trapezium matters, can also be obtained by the GAIL. We have already heard arguments regarding relocation of industries from Taj Trapezium. Some of the industries which are not in a position to get gas connections or which are otherwise polluting may have to be relocated outside Taj Trapezium. The GAIL may also examine whether in the event of availability of more quantity of gas, the same can be supplied to the industries outside the Taj Trapezium which are located in the vicinity from where the gas pipe is passing.
>
> Mr. Gupta has further stated that for the purposes of laying distribution network within the Taj Trapezium, GAIL is establishing a joint venture Company. However, pending formation of the joint venture Company, the required functions are being performed by GAIL. It is stated that GAIL had advertised comparative prices and heat equivalent of various fuels in the newspapers circulated in Agra and Ferozabad to enable the industries, who are prospective consumers of gas to evaluate the economics of conversion to gas. So far 214 parties from Agra and 364 parties from Ferozabad have responded. According to the affidavit these responses are being processed. Mr. Reddy, on our asking, states that he would have the matter examined and file an affidavit in this Court within two weeks indicating the time frame regarding the laying of distribution net work within the Taj Trapezium. Mr. Reddy further states that some land shall have to be required for the purposes of constructing city Gate Stations at Agra and Ferozabad. He states that the cooperation of the U.P. Government is required for acquiring the land. We direct the Collector, Agra as well as Collector, Ferozabad to render all assistance to GAIL in acquiring land for setting up the two stations for the public purposes."

This Court on September 12, 1996 passed the following order regarding the safety measures to be taken during the construction and operation of the gas net-work in the Taj Trapezium. The Court also recorded the undertaking by learned counsel for the industries that the industries in TTZ are taking steps to approach the Gas Authority of India for gas connections:

> "Pursuant to this Court's order dated

April 10, 1996 and subsequent order dated May 10, 1996, Mr. P.C.Gupta, General Manager, Gas Authority of India has filed an affidavit. It is stated in the affidavit that necessary directions in the pipe-line design corrosion protection, protection during construction and during operations have been taken by the Gas Authority of India. It is for the Central Pollution Control Board or the State Pollution Control Board concerned to examine the legal position and do the needful, if anything is to be done under law. Mr. Gupta, in para 5, has further stated as under:

> "However, in its endeavour GAIL has not received sufficient response from the industrialists in the City of Agra, where prospective industrial consumers of gas have not yet worked out how to convert the cupole furnaces to gas fired ones. Hence, GAIL apprehends that after it has undertaken provisioning such an expensive infrastructure exercise, it may not have enough consumers for the gas supplies in Agra at least during the near future of commencement of the supply. This Hon'ble Court may therefore, direct the prospective consumers to inform this Hon'ble Court of their willingness to convert to gas."

"Mr. Sibal and Mr. Parekh, learned counsel appearing for most of the industries have informed us that the industries are taking steps to approach the GAIL for gas connection. Mr. Parekh further states that most of them have already done it. This is a matter between the industries and GAIL. It is for their benefits that the industries should approach the GAIL for gas connection."

14. The NEERI submitted a Technical Report dated March 7, 1994 pertaining to "Issues Associated with Fuel Supply Alternatives for Industries in Agra-Mathura Region". Paras 2.4.1 and para 3 of the Report are as under:-

> "2.4. Safety Requirements
>
> 2.4.1.NG: The use of NG involves the defining of No Gas Zone for safe distribution. The new sites in Agra and Firozabad industries being identified by the Government of Uttar Pradesh shall minimise this hazard as the industrial estates shall be suitably designed for NG distribution.
>
> The new industrial sites should preferably be out of the Taj Trapezium. The incentives for industries to shift to new industrial estates need to be established to ensure speedy implementation.
>
> xxx xxxx xxx
>
> 3.0 Summary
>
> The various issues raised in this report pertaining to the fuel supply alternatives to the industries in Agra-Firozabad region and the Mathura Refinery, can be summarized as:
>
> - Need for relocation of industries.
> - Availability of cleaner fuel (present and future)
> - Environmental benefits from alternate fuels
> - Safety considerations
>
> The recommendations are summarized hereunder:
>
> - Shifting of small scale polluting industries outside the Taj Trapezium on industrial estate sites to be identified by the Government of Uttar Pradesh.
> - Provision of natural gas to the industries in Agra-Mathura region and Mathura Refinery".

15. Mr. M.C.Mehta, Mr. Kapil Sibal and other learned counsel representing the Agra-industries took us through the April-1995 Varadharajan Committee Report. Relevant paragraphs of the Report are reproduced hereunder:-

"4....The Expert Committee's recommendation that steps may be taken to ensure that no new industry, including small industries or other units, which can cause pollution are located north-west of the Taj Mahal, has been enforced. However, efforts to relocate existing small industries, particularly the foundries, in an area south-east of Agra beyond the Taj Mahal, have not been successful."

16. The Report clearly shows that the level of Suspended Particulate Matters (SPM) in the Taj Mahal area is high. The relevant part of the Report in this respect is as under:-

"S.P.M. (Period 1981-1993)

i. The level of SPM at Taj Mahal is generally guite high, the monthly mean values being above 200 micrograms/cubic metre for all the months during 1981-1985 except for the monsoon months..

ii. There is an increasing trend in the monthly mean SPM concentrations from about 380 micrograms/cubic metre to 620 micrograms/cubic metre during the period 1987-1991, and the trend reverses thereafter till 1993. There is a decrease in monthly mean SPM levels from 620 micrograms/cubic metre in 1991 to about 425 micrograms/cubic metre in 1993."

17. Para 71 of the Report deals with the consumption of coal in the Agra areas. The relevant part is as under :-

"...... These do cause pollution of the atmosphere. Industries in Agra are situated north west, north and north east of the Taj Mahal, several of them being located across the river. These are the major sources of concern as they are not far away, and much of the time winds blow from their location towards Taj Mahal."

18. Para 78 relating to the use of natural gas is as under:-

".... Natural gas distribution to industries in existing locations in Agra would need installation of pipelines and meters. This may be expensive and in addition not ensure safety, as accidental leakage in pipeline network may lead to explosions and fires. It may however be possible to use LPG or HSD with suitable precautions, after careful review."

19. Relevant part of para 79 is as under:-

"...... NEERI Report dated March 7, 1994 on Fuel Supply alternatives (Annexure) suggests Natural Gas can be considered for use only in new industrial sites."

20. The industries in Agra have been dealt in paras 92, 93, 95 and 96 which are as under:-

"92. Industries in Agra and Ferozabad have been asked to instal APCD to reduce essentially SPM level in air emissions. UPPCB has the authority to monitor their performance to meet standards outlined for different industries by CPCB, noting their capacities. These regulations should be fully enforced. NEERI has suggested suitable sites in Agra and Ferozabad could be identified and developed as industrial estates with facilities, separated from residential area. If such sites are developed, natural gas supply in the industrial estate would be possible with safety, and the industrial units could be shifted.

93. ..... There is need for a single authority in such estates to coordinate all maintenance and repair work on electrical supply, telecommunications, water, sewage, drains, roads and construction. Any industrial estate in Agra with natural gas will have to be located at a substantial distance from monuments to ensure full safety.

xxx xxx xxx

95. When industrial units are relocated, it would be appropriate to modernise technology equipment and buildings.

Most of the units will need very substantial financial assistance. The value of the present sites and their future use have to be determined. It would not be desirable to promote residential colonies and commercial establishments in such vacated areas as they may in turn add to the problems of water supply and atmospheric quality by excessive use of energy. Major changes of this nature would need a clear development planning strategy and resources, and will also take several years for implementation.

96. There is urgent need for quicker measures which could lead to better environment, especially in the Taj Mahal. For this purpose, it is necessary to effect overall reduction in coal/coke consumption by industries and others in Agra and in Taj Trapezium Zone generally. The present level of consumption of 129 metric tonne per day by industry can be substantially reduced by new technology and by use of LPG and HSD of low sulphur. Stricter standards for emissions may be evolved when such technological and fuel changes are effected. Support for development of modifications in design and operation and demonstration should be provided. Some assistance to industries for adoption of these may be considered after careful examination of the costs and benefits to the industry and to society. All those industries not responding for action for feasible changes and contributing disproportionately to atmospheric pollution have to face action."

21. The Taj being a monument on the World Heritage List, the Government of India sought the expert advice through UNESCO on the structural and chemical preservation aspects of the monument. Accordingly, two experts, namely, Dr. Mentrizio Marbeilli and Dr. M. Larze Tabasso visited the Taj Mahal between January 17-30, 1987 to study the problems pertaining to the conservation of marble and sand stones in The Taj and recommended remedial measures. According to them, the yellowishness of the marble is due to (a) SPM and (b) dust fall impinging on the surface. Opinions of the Archaeological Survey of India and other scientists annexed to the Varadharajan Report unanimously say that the yellow shadow of the marble on different parts of The Taj including four minarets is mainly due to SPM and the dust fall impinging on the surface. The comments of the Archaeological Survey of India as noticed in the Varadharajan Report are as under:-

> "On the structural side, the Taj Mahal is in a sound state of preservation and the studies conducted so far also confirm the same. The only threat to the Taj Mahal is from the environmental pollution.
>
> The Science wing of the ASI is continuously monitoring the level of suspended particulate matter, sulphur dioxide concentration and sulphation rate. The studies made in this regard shows that suspended particulate matter level has been found to be higher than the maximum permissible level 100 kg/m3 . This has imparted a yellowish appearance on the surface of the Taj Mahal."

22. After careful examination of the two Varadharajan Reports (1978 and 1995) and the various NEERI reports placed on record, we are of the view that there is no contradiction between the two sets of reports. In the 1978 Report, Varadharajan found substantial level of air pollution because of sulphur dioxide and SPM in the Agra region. The source, according to the report, was the coal-users including approximately 250 small industries mainly foundries. The excess of SPM was because of the use of coal. The Report specifically recommended in para 5.4

for the relocation of the existing small industries particularly the foundries. The 1995 Varadharajan Report clearly shows that the standard of atmospheric pollution is much higher than the 1981-85 period which according to the Report is also because of heavy traffic and operation of generating sets. NEERI reports have clearly recommended the relocation of the industries from the TTZ.

23. This Court on April 11, 1994, passed the following order:-

> ".... We are of the view that the shifting of the industries from the Taj Trapezium has to be made in a phased manner. NEERI's report indicates that the maximum pollution to the ambient air around Taj Mahal is caused by the industries located in Agra. We, therefore, as a first phase, take up the industries situated in Agra for the purposes of the proposed shifting outside Taj Trapezium.....
>
> xxx xxx xxx
>
> We, therefore, direct the U.P. State Pollution Control Board to issue Public Notices in the two national English Daily newspapers and also two vernacular newspapers for three consecutive days indicating that the Supreme Court of India is processing the proposal for shifting of the air polluting industries such as Foundries, Pit Furnaces, Rubber Sole, Chemical, Refactory Brick, Engineering and Lime Processing from Agra to outside Taj Trapezium at a suitable place to be selected after hearing the parties including the industry owners. The individual industries shall be asked to supply the following information:
>
> 1. Name, Registration Number, Location and the ownership/status of the industry.
> 2. Total land/including built up area which is at present under the possession of the industry.
> 3. Nature/quantum of the fuel which is being used.
> 4. Number of the workers/other staff employed.
> 5. Total Capital investment/turnover of the industry.
> 6. Extent of the land required by the industry in the new industrial area outside the Taj Trapezium.
> 7. The product of the industry and the raw material used for such production.
> 8. The nature/extent of the alternate safe fuel, if required.
> 9. Financial assistance in the shape of loan etc., if required, and to what extent.
>
> Apart from Public Notice, individual Notices to all the industries which are situated in Agra shall also be served by the U.P. State Pollution Control Board, to the air polluting industries. We further direct the Union of India to have a gist of the above Public Notice announced on local television as well as on local Radio in Agra/Mathura for three consecutive days.
>
> The publication of the Notice in the National Newspapers shall be got done by the U.P. Pollution Control Board on April 29-30, 1994 and May 1, 1994. Thereafter, the Notices shall be got published in the local newspapers on May 6, 7 and 8, 1994. The individual notices shall be served on the industries before May 8, 1994. The Union of India shall also have the notice broadcast as directed by us between May 1 and May 10, 1994. Mr. N.N. Goswamy, learned senior counsel fairly states that he will prepare the gist of the notice and send it to the Government of India."

24. The chronology of the orders quoted by us in this judgment shows that this Court took cognizance of this matter in January 1993. There are four NEERI reports, two Varadharajan reports and several reports by the Board. After examining all the reports and taking into consideration other material on the record, we have no hesitation in holding that the industries in the TTZ are active contributors to the air pollution in the said area. NEERI and Varadharajan (1978) reports have specifically recommended the relocation of industries from the TTZ. Although the Board has placed on record list of 510 industries which are responsible for air pollution but in view of our order dated April 11, 1994 (quoted above), we are confining this order only to 292 industries located and operating in Agra. These industries are listed hereunder:

(List not attached)

25. The Taj, apart from being cultural heritage, is an industry by itself. More than two million tourists visit The Taj every year. It is a source of revenue for the country. This Court has monitored this petition for over three years with the sole object of preserving and protecting The Taj from deterioration and damage due to atmospheric and environmental pollution. It cannot be disputed that the use of coke/coal by the industries emit pollution in the ambient air. The objective behind this litigation is to stop the pollution while encouraging development of industry. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and the eco-systems have to be protected. The pollution created as a consequence of development must commensurate with the carrying capacity of our eco-systems.

26. Various orders passed by this Court from time to time (quoted above) clearly indicate that the relocation of the industries from TTZ is to be resorted to only if the natural gas which has been brought at the doorstep of TTZ is not acceptable/available by/to the industries as a substitute for coke/coal. The GAIL has already invited the industries in TTZ to apply for gas connections. Before us Mr. Kapil Sibal and Mr. Sanjay Parikh, learned counsel for the industries have clearly stated that all the industries would accept gas as an industrial-fuel. The industries operating in TTZ which are given gas connections to run the industries need not relocate. The whole purpose is to stop air pollution by banishing coke/coal from TTZ.

27. This Court in *Vellore Citizens Welfare Forum* vs. *Union of India & Ors.*, JT 1996 (7) SC 375, has defined "the precautionary principle" and the "polluter pays principle" as under:-

> "11. ...... We are, however, of the view that "the Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means :
>
> (i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.
>
> (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
>
> (iii) The "Onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.
>
> 12. "The Polluter Pays" principle has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action vs. Union of India, J.T. 1996 (2) 196. The Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country". The Court ruled that "Once the

activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on." Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

13. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48A and 51A(g) of the Constitution are as under:-

> "47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
>
> 48A. Protection and improvement of environment and safeguarding of forest and wild life. - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
>
> 51A(g). To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

Apart from the constitutional mandate to protect and improve the environment there are plenty of post independence legislations on the subject but more relevant enactments for our purpose are: The Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment Protection Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. Also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the

> Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the later part of this judgment.
>
> 14. In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country."

28. Based on the reports of various technical authorities mentioned in this judgment, we have already reached the finding that the emissions generated by the coke/coal consuming industries are air-pollutants and have damaging effect on The Taj and the people living in the TTZ. The atmospheric pollution in TTZ has to be eliminated at any cost. Not even one per cent chance can be taken when - human life apart - the preservation of a prestigious monument like The Taj is involved. In any case, in view of the precautionary principle as defined by this Court, the environmental measures must anticipate, prevent and attack the cause of environmental degradation, The 'onus of proof' is on an industry to show that its operation with the aid of coke/coal is environmentally benign. It is, rather, proved beyond doubt that the emissions generated by the use of coke/coal by the industries in TTZ are the main polluters of the ambient air.

29 We, therefore, hold that the above-mentioned 292 industries shall as per the schedule indicated hereunder change-over to the natural gas as an industrial-fuel. The industries which are not in a position to obtain gas connection - for any reason - shall stop functioning with the aid of coke/coal in the TTZ and may relocate themselves as per the directions given by us hereunder.

30. We order and direct as under:-

(1) The industries (292 listed above) shall approach/apply to the GAIL before February 15, 1997 for grant of industrial gas - connection.

(2) The industries which are not in a position to obtain gas connections and also the industries which do not wish to obtain gas connections may approach/apply to the Corporation (UPSIDC)/Government before February 28, 1997 for allotment of alternative plots in the industrial estates outside TTZ.

(3) The GAIL shall take final decision in respect of all the applications for grant of gas connections by March 31, 1997 and communicate the allotment letters to the individual industries.

(4) Those industries which neither apply for gas connection nor for alternative industrial plot shall stop functioning with the aid of coke/coal in the TTZ w.e.f. April 30, 1997. Supply of coke/coal to these industries shall be stopped forthwith. The District Magistrate and the Superintendent of Police shall have this order complied with.

(5) The GAIL shall commence supply of gas to the industries by June 30, 1997. As soon as the gas supply to an industry commences, the supply of coke/coal to the said industry shall be stopped with immediate effect.

(6) The Corporation/Government shall finally decide and allot alternative plots, before March 31, 1997, to the industries which are seeking relocation.

(7) The relocating industries shall set up their respective units in the new industrial estates outside TTZ. The relocating industries shall not function and operate in TTZ beyond December 31, 1997. The closure by December 31, 1997 is unconditional and irrespective of the fact whether the new unit outside TTZ is completely set up or not.

(8) The Deputy Commissioner, Agra and the Superintendent (Police), Agra shall effect the closure of all the industries on December 31, 1997 which are to be relocated by that date as directed by us.

(9) The U.P. State Government/

Corporation shall render all assistance to the industries in the process of relocation. The allotment of plots, construction of factory buildings, etc., and issuance of any licence/ permissions, etc., shall be expedited and granted or priority basis.

(10) In order to facilitate shifting of industries from TTZ, the State Government and all other authorities shall set up unified single agency consisting of all the Departments concerned to act as a nodal agency to sort out all the problems of such industries. The single window facility shall be set up by the U.P. State Government within one month from today. The Registry shall communicate this direction separately to the Chief Secretary, Secretary (Industries) and Chairman/Managing Director, UPSIDC along with a copy of this judgment. We make it clear that no further time shall be allowed to set up the single window facility.

(11) The State Government shall frame a scheme for the use of the land which would become available on account of shifting/ relocation of the industries before June 30, 1997. The State Government may seek guidance in this respect from the order of this Court dated May 10, 1996 in I. A. No.22 in Writ Petition (Civil) No. 4677 of 1985.

(12) The shifting industries on the relocation in the new industrial estates shall be given incentives in terms of the provisions of the Agra Master Plan and also the incentives which are normally extended to new industries in new industrial estates.

(13) The workmen employed in the above - mentioned 292 industries shall be entitled to the rights and benefits as indicated hereunder:-

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment.

(b) The period between the closure of the industry in Agra and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

(c) All those workmen who agree to shift with the industry shall be given one year's wages as 'shifting bonus' to help them settle at the new location. The said bonus shall be paid before January 31, 1998.

(d) The workmen employed in the industries who do not intend to be relocated/obtain natural gas and opt for closure, shall be deemed to have been retrenched by May 31, 1997, provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act. These workmen shall also be paid, in addition, six years wages as additional compensation.

(e) The compensation payable to the workmen in terms of this Judgment shall be paid by the management within two months of the retrenchment.

(f) The gratuity amount payable to any workman shall be paid in addition.

31. Before parting with this judgment, we may indicate that the industries in the TTZ other than 292 industries shall be dealt with separately. We direct the Board to issue individual notices and also public notice to the remaining industries in the TTZ to apply for gas connection/relocation within one month of the notice by the Board. The Board shall issue notice within one month from today. The matter to come up for further monitoring in this respect before this Court on April 4, 1997.

32. We may also indicate that this Court by order dated May 10, 1996 has stopped the operation of all the brick kilns in the TTZ with effect from August, 15,1996. This Court by order dated September 4, 1996 has directed that the fly-ash produced in the process of the functioning of thermal plants may be supplied to the brick kilns for the construction of bricks. This would be a useful step to eliminate the pollution caused by fly-ash.

33. This Court is separately monitoring the following issues for controlling air pollution in TTZ:-

(a) The setting up of hydrocracker unit and various other devices by the Mathura Refinery.

(b) The setting up of 50 bed hospital and two mobile dispensaries by the Mathura Refinery to provide medical aid to the people living in the surrounding areas (Court order dated August 7, 1996).

(c) Construction of Agra bypass to divert all the traffic which passes through the city. Under directions of this Court, 24Kms' stretch of the bypass shall be completed by the end of December 1996 (Court order dated April 10, 1996)

(d) Additional amount of Rs. 99.54 crores sanctioned by the Planning Commission to be utilised by the State Government for the construction of electricity supply projects to ensure 100 per cent uninterrupted electricity to the TTZ. This is necessary to stop the operation of generating sets which are major source of air pollution in the TTZ (Court orders dated April 10, 1996, May 10, 1996, August 30, 1996, September 4, 1996 and September 10, 1996).

(e) The construction of Gokul Barrage, water supply work of Gokul Barrage, roads around Gokul Barrage, Agra Barrage, and water supply of Agra Barrage, have also been undertaken on a time schedule basis to supply drinking water to the residents of Agra and to bring life into river Yamuna Which is next to the Taj (Court order dated May 10, 1996 and August 30, 1996).

(f) Green belt as recommended by NEERI has been set up around Taj. Pursuant to continuous monitoring of this Court, the Green Belt has become a reality.

(g) This Court suggested to the Planning Commission by order dated September 4, 1996 to consider sanctioning separate allocation for the city of Agra and the creation of separate cell under the control of Central Government to safeguard and preserve the Taj the city of Agra and other national heritage monuments in the TTZ.

(h) All emporia and shops functioning within the Taj premises have been directed to be closed.

(i) Directions have been issued to the Government of India to decide the issue, pertaining to declaration of Agra as heritage, city within two months.

34. We are mentioning these issues dealt with by this Court because it may be necessary to monitor some of these matters to take them to a logical extent. This Court may look into these matters on April 4, 1997.

35. The issue relating to 292 industries is thus disposed of.

SCALE (PIL) 1981-97 953

UNION OF INDIA & ORS, *Appellants*

VS

SUSHIL KUMAR MODI & ORS. *Respondents*

CORAM: J.S. VERMA, K. RAMASWAMY AND S.P. BHARUCHA, JJ.

Order dated January 24, 1997 in C.A. Nos. 304-305 of 1997 (arising out of SLP (C) Nos. 311-312 of 1997). **[1997(1) SCALE 432]**

PUBLIC INTEREST LITIGATION — CORRUPTION — FODDER SCAM — Order reported in 1996(8)SCALE 4 — Court while clarifying its earlier order, Held, The delicate task of ensuring implementation of the rule of law by requiring proper performance of its duty by the CBI and other Government agencies, while taking care to avoid the likelihood of any prejudice to the accused at the ensuing trial because of any observation made on the merits of the accusation in the present proceeding, has to be performed with the dexterity and tact needed in the conduct of such a proceeding. The High Court, would bear in mind this aspect to prevent any reasonable impression of erosion in the credibility of the judicial process.

Referred: R. vs Metropolitan Police Commissioner, 1968 (1) All.E.R.763; Abhinandan Jha vs Dinesh Mishra, AIR 1968 SC 117 = 1967 (3) SCR 668; Vineet Narain & Ors vs Union of India & Anr., 1996 (2) SCC 199 = 1996(1) SCALE (SP) 31; Vineet Narain & Ors vs Union of India & Anr, 1996 (3) SCALE (SP) 15; Anukul Chandra Pradhan vs Union of India & Ors, 1996 (6) SCC 354 = 1996(7) SCALE 438.

1. Leave granted.

2. This order has to be read in continuation of our order dated November 5, 1996 passed in Civil Appeal Nos. 14164-65 of 1996, Union of India & Ors. Vs. Sushil Kumar Modi & Ors., reported in 1996 (6) SCC 500. These appeals by special leave are against some portions of the orders dated November 13, 1996 and December 19, 1996 passed by the Patna High Court in the same matter - CWJC No. 1617 of 1996 with CWJC No. 602 of 1996 - as a sequel thereto. The material facts need not be reiterated as they are mentioned in our aforesaid order dated November 5, 1996.

3. When the matter was taken up in the Patna High Court subsequent to our aforesaid order dated November 5, 1996, during the further proceedings after our order, the High Court has made the two orders dated November 13, 1996 and December 19, 1996. The learned Attorney General, on behalf of the appellants, has indicated certain portions of these two orders and contended that they do not match with our earlier order dated November 5, 1996. It would be appropriate at this stage to quote those portions of the two orders to which grievance is made by the learned Attorney General. These are:

In order dated November 13, 1996:

Portion 'A':

"The Supreme Court has not laid down the modality of making reference to the Attorney General in case of difference of opinion. What if the Director does not make the reference on his own. According to us, this can be sorted out by asking the Director, CBI, to submit the complete reports submitted by the Joint Director and/or other investigating officers so that in the event Court finds that there is difference of opinion, which requires resolution by the Attorney General, the same may be referred to him."

Portion 'B':

"The aforesaid aspects of the matter as also other aspects, which were briefly mentioned during the course of hearing today, can be more properly and effectively discussed in the presence of the Director, CBI, himself. He is also to be told about the import of the Supreme Court's orders. We are, therefore, of the opinion that the next hearing should take place in his presence."

In order dated December 19, 1996:

Whole of Para 4, Particularly the following:

Portion 'C':

"the present case is the only case of its kind in which investigation is being monitored by the High Court.... in the interest of proper and effective monitoring of the case we think it appropriate to direct that the final report which is submitted to the CBI Headquarters/Director be submitted in its original form......The correct position, which emerges from the order of the Supreme Court, is that the report of the Joint Director is not to be submitted to this Court directly, the same has to be sent to the Director, CBI/Headquarters and then the same is to be filed in this Court. As indicated above, there is a very thin line of distinction between vetting and editing and if this authority to vet the report submitted to him is given to the Director, he may as well edit a part of it. The proper course, no doubt, would be to hold discussions across the table between the Director, Joint Director and others whose presence may be considered necessary so that differences, if any, between them are ironed out and a unanimous report is submitted. However, if such unanimity is not possible to arrive at, the Director must submit the original report as submitted to him along with his comments/views so that this Court may consider that too and issue appropriate directions."

In para 5, the following:

Portion 'D':

"In those cases also the conspiracy angle does not appear to have been gone into, which is so vital for proper investigation into the crimes and in respect of which judicial finding has been recorded in the main judgment."

In para 6, the following:

Portion 'E':

"In this connection we would also like to impress upon the Director to consider in consultation with the Joint Director the desirability of posting/retaining officers, who do not belong to this State or the state cadre. Keeping in view the involvement of a very large number of persons of different hue and kind, chances of their influencing persons having local background cannot be ruled out....".

In para 8, the following:

"*Portion 'F':*

"The reports contain materials which constitute prima facie case against the persons concerned and it is not understandable as to why chargesheet cannot be submitted on the basis of the materials referred to therein....."

The learned Attorney General submitted that the above extracts of the two orders made by the High Court, in particular, are unwarranted apart from certain other observations therein which could have been avoided. In reply Shri Ram Jethmalani submitted that the observations of the High Court have to be understood in the context as indicating the manner in which the Central Bureau of Investigation (CBI) is required to conduct the investigation. He submitted that a grievance of this kind by the CBI does not appear to be appropriate.

4. At the outset, we would indicate that the nature of proceedings before the High Court is somewhat similar to those pending in this Court in Writ Petition (Crl.) Nos. 340-343 of 193, *Vineet Narain & Ors. Vs. Union of India & Ors.*, and Writ Petition (Civil) No. 640 of 1995, *Anukul Chandra Pradhan Vs. Union of India & Ors.*, and, therefore, the High Court is required to proceed with the matter in a similar manner. It has to be borne in mind that the purpose of these proceedings is essentially to ensure performance of the statutory duty by the CBI and the other Government agencies in accordance with law for the proper implementation of the rule of law. To achieve this object a fair, honest and expeditious investigation into every reasonable accusation against each and every person reasonably suspected of involvement in the alleged offences has to be made strictly in accordance with law. The duty of the Court in such proceedings is, therefore, to ensure that the CBI and other Government agencies do their duty and do so strictly in conformity with law. In these proceedings, the Court is not required to go into the merits of the accusation or even to express any opinion thereon, which is a matter for consideration by the competent court in which the charge-sheet is filed and the accused have to face trial. It is, therefore, necessary that not even an observation relating to the merits of the accusation is made by the Court in these proceedings lest it prejudice the accused at the trial. The nature of these proceedings may be described as that of 'continuing mandamus' to require performance of its duty by the CBI and the other concerned Government agencies. The concerned agencies must bear in mind and, if needed, be reminded of the caution administered by Lord Denning in this behalf in *R. Vs. Metropolitan Police Commissioner,* 1968 (1) All.E.R. 763. Indicating the duty of the Commissioner of Police, Lord Denning stated thus :-

> ".......I have no hesitation, however, in holding that, like every constable in the land, *he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State..... I hold it to be the duty* of the Commissioner of Police, as it is of every chief constable, *to enforce the law of the land.* He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; *but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that: or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.....*"

The nature of such a proceeding in a Court of law was also indicated by Lord Denning, as under:

> "A question may be raised as to the machinery by which he could be compelled to do his duty. *On principle, it seems to me that once a duty exists, there should be a means of enforcing it. This duty can be enforced,* I think, either by action at the suit of the Attorney-General: or *by the prerogative order of mandamus....*".

(Page 769)
(emphasis supplied)

There can hardly be any doubt that the obligation of the police in our constitutional scheme is no less.

5. According to the Code of Criminal Procedure, the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the Police and by no other authority, (See, *Abhinandan Jha Vs. Dinesh Mishra,* AIR 1968 SC 117 = 1967 (3) SCR 668). This must be borne in mind as also that the scope and purpose of a proceeding like the present is to ensure a proper and faithful performance of its duty by the police officer by resort to the prerogative writ of mandamus.

6. To ensure this aspect, we had directed in our earlier order dated November 5, 1996 that in case of difference of opinion at any stage during the investigation, the final decision is not to be taken by the Director, CBI or any other officer but by the Attorney General on reference being made to him of the difference of opinion between the concerned officers. This part of our earlier directions was clear in the context in which it was made and this is to be understood as a direction to the Director, CBI for compliance in the manner indicated. The High Court is only required to ensure that the Director, CBI does not close any investigation based only upon his individual opinion if there be any difference of opinion between him and the concerned officers in the CBI. Such a matter is then required to be referred by the Director to the Attorney General for his opinion, which would govern the further action to be taken therein. The above quoted portion 'A' of the order dated November 13, 1996 of the High Court requires the High Court to act in the manner herein indicated.

7. So far as portion 'B', as quoted above, of the order dated November 13, 1996 is concerned, it is sufficient for us to observe that the High Court would take into account the fact that the personal presence of the Director, CBI in the High Court may be required only when it is essential for a purpose which cannot be served by the presence of the other officers of the CBI who normally represent the CBI at the hearings in the High Court. In view of the numerous cases pending in different High Courts, the Director, CBI personally may not be left with sufficient time from his official duties to appear personally at the hearings of these matters in the High Courts. However, it is the duty of the Director, CBI to ensure proper representation on his behalf in the High Court so that the High Court gets all the assistance needed at the hearings.

8. The observations of the High Court contained in the above quoted portion 'D' in para 5 and portion 'F' in para 8 of its order, do not appear to conform strictly to the manner of exercise of the monitoring process by the Court. It is likely that they may be construed as expression of opinion on the merits of the case. Portion 'C' in para 4 of the High Court's order appears to be unnecessary. For the purpose of properly monitoring the case in terms of the order of this Court, keeping in view the nature of this proceeding and the manner in which the exercise is to be performed to ensure performance of its duty by the CBI, guidance through the counsel of the CBI could have been given by the High Court without entering into the merits of any of the accusations.

9. The only remaining portion of the High Court's order for consideration is Portion 'E' in para 6. Suffice it to say that the High Court has merely suggested to the Director, CBI to consider the desirability of not involving any officer of the Bihar cadre in the investigation but no such direction has been given. It appears that the High Court intended to impress upon the Director, CBI the need to consider avoiding any possible embarrassment to officers of the Bihar cadre in view of the suspicion of the alleged involvement of several important persons in the State administration. We do not read the observations to mean that they cast any aspersion on the officers of the Bihar cadre. The learned Attorney General also did not further press this objection since this observation has to be so construed in the context.

10. It appears to us necessary to reiterate that the proceeding before the High Court in the present case being somewhat similar to the proceedings in Writ Petition (Crl.) Nos. 340-343 of 1993, *Vineet Narain & Ors. Vs. Union of India & Ors.*, and Writ Petition (Civil) No. 640 of 1995, *Anukul Chandra Pradhan Vs. Union of India & Ors.*, pending in this Court, the procedure required to be adopted by the High Court has to be on the same lines. We also consider it appropriate to draw the attention of the CBI and the High

Court to the orders of this Court made in these matters indicating the manner of performance of the duty. In *Vineet Narain & Ors. Vs. Union of India & Anr.*, 1992 (2) SCC 199, it was said:

> "In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.
>
> In case of persons against whom a prima facie case is made out and a charge-sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law."
>
> (Page 201)

In *Vineet Narain & Ors. Vs. Union of India & Anr.*, 1996 (3) Scale (SP) 15, it was said:

> "To eliminate any impression of bias and avoid erosion of credibility of the investigations being made by the CBI and any reasonable impression of lack of fairness and objectivity therein, it is directed that the CBI would not take any instructions from, report to, or furnish any particulars thereof to any authority personally interested in or likely to be affected by the outcome of the investigations into any accusation. This direction applies even in relation to any authority which exercises administrative control over the CBI by virtue of the office he holds, without any exception. We may add that this also accords with that the learned Solicitor General has very fairly submitted before us about the mode of functioning of the CBI in this matter."

In *Anukul Chandra Pradhan Vs. Union of India & Ors.*, 1996 (6) SCC 354, it was said:

> "A note of caution may be appropriate. No occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement, undoubtedly has to be kept in view during the entire trial. It is reiterated, that any observation made by this Court for the purpose of the proceedings pending here has no bearing on the merits of the accusation, and is not to influence the trial in any manner. Care must be taken to ensure that the credibility of the judicial process is not undermined in any manner."
>
> (Pages 356 - 357)

11. The true purpose and scope of a proceeding of this nature clearly emerges from the above quoted orders passed in the cases pending in this Court. Some of the orders are indicated above. The required guidance to the CBI and other government agencies as well as to the courts' monitoring such investigations is available from the same. The delicate task of ensuring implementation of the rule of law by requiring proper performance of its duty by the CBI and other Government agencies, while taking care to avoid the likelihood of any prejudice to the accused at the ensuing trial because of any observation made on the merits of the accusation in the present proceeding, has to be performed with the dexterity and tact needed in the conduct of such a proceeding. We have no doubt that all concerned, including the High Court, would bear in mind this aspect to prevent any reasonable impression of erosion in the credibility of the judicial process.

12. We have no doubt that the CBI and the High Court would proceed further in the matter as indicated above. There can be no grievance to the CBI or any other authority if the High Court's order and the proceedings before it are so understood and continued. We make it clear that the above orders made by the High Court are to be construed and understood in the manner indicated herein.

13. These appeals are disposed of, accordingly.

SCALE (PIL) 1981-97 959
DELHI DEVELOPMENT AUTHORITY *Petitioner*
VS
SKIPPER CONSTRUCTION AND ANR. *Respondent*
CORAM: B.P. JEEVAN REDDY AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — ADVANCEMENT OF LOANS/ BANK GUARANTEES TO M/S SKIPPER CONSTRUCTION PVT. LTD. — One-Man Commission appointed to investigate the circumstances in which the loans were granted by the banks — Report submitted — Court, after perusal of the report, directs the person held responsible for such advancement of loans/bank guarantees to be present in the Court and issues notice as to why the amounts should not be recovered from him and also passes orders freezing all accounts and directs the said person not to deal with or dispose of any properties held by him or his wife or his children, movable or immovable, directly or indirectly, and also directs that any Company of which he is a Director or in the Management, in any way or any firm of which he is a partner or in control thereof, directly or through any other person, shall also not deal with or dispose of any assets except in the usual course of business — Court directs the Commissioner of Police to ensure presence of the person on the next date of hearing.

1. Hon'ble Mr. Justice Saharya, a Learned Judge of the Delhi High Court was appointed as One-Man Commission by this Court to investigate into the circumstances in which loans/bank guarantees were advanced by the New Bank of India (now merged with the Punjab National Bank) and the Canara Bank, and into the conduct of officials of the aforesaid two banks, in the matter of advancement of loans/bank guarantees to Messrs. Skipper Construction Pvt. Ltd.

2. Justice Saharya Commission has enquired into the matter and has submitted the report on 20th January, 1997.

3. So far as the New Bank of India is concerned the Commission has reported that Mr. R.C. Suneja (who was the Chairman and Managing Director of the said Bank) working in tandem with the General Manager (Credit) and Deputy General Manager (Credit) has defrauded the bank by corrupt and illegal means. It has found that the said Shri Suneja has "deliberately and fraudulently committed the funds of the bank and extended facility to the company in clear and direct violation of the prescribed norms, practice and procedure. He disregarded and threw to the winds all norms, rules and guidelines...... adverse factors of the proposal were twisted and

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Order dated January 31, 1997 in I.A. Nos. 16, 23, 24, 25, 27, 29, 30, 31, 32, 36, 38-49, 15, 32A, 33, 34, 50, 51-54 in S.L.P. (C) No. 21000/93 (From the Judgment and Order dated 9/12/93 in Suit No. 770/ 93 of the High Court of Delhi at New Delhi) [1997(1) SCALE 532] misrepresented in the credit notes with a view to help the company rather than protecting the interest of the bank....... in the circumstances, the only inference that can be drawn is that Mr. R.C. Suneja, Chairman-cum-Managing Director and the other top officials in the head office of the Bank connived and acted hand in glove with the Company to enter illegitimate gains upon the latter and that they must have done so for secret benefits."

4. We are told that Shri R.C. Suneja is no longer connected with the Punjab National Bank into which New Bank of India has been amalgamated.

5. The findings recorded by the Commission called for appropriate action at the hands of this Court to safeguard public interest, public funds and the interests of administration. Accordingly, we issue notice to Shri R.C. Suneja, the former Chairman-cum-Managing Director of New Bank of India, to show cause why the loss caused by him to the said Bank, which is said to be in the region of about Rs. 11 Crores, be not recovered from his person and the properties held by him and his wife and his children. With a view to ensure that any orders passed in these proceedings are effective, we direct Shri Suneja not to deal with or dispose of any property held by him or by his wife or by his children, movable or immovable, directly or indirectly. Any Company of which he is a Director or in the Management thereof in any way or any firm of which he is a partner or in control thereof, directly or through any other person, shall also not deal with or dispose of any assets except in the usual course of business. He shall, however, be entitled to withdraw upto Rs. 10,000/- (Rupees Ten thousand only) from any one of his bank accounts. He is, of course, entitled to apply to this Court for further directions.

6. The Commissioner of Police(Delhi) is directed to forthwith serve a copy of this order upon him. This matter is posted on 3.2.97. Shri Suneja shall present himself in the Court on that day. The Commissioner of Police shall ensure that he is kept present in the Court on that day.

7. Justice Saharya Commission has further reported that there was one Government Nominee Director, One RBI Nominee Director (who was of course, changing from time to time) and and a Workman Director in charge of the affairs of the bank viz.,

(1)	Ms. Tajwar Rehman Sawhney Government Nominee Director	13.9.85 - 18.8.88
(2)	Mr. Sudershan Lal RBI Nominee Director	20.11.85 - 3.2.87
(3)	Mr. P. Krishnamurthy RBI Nominee Director	4.2.87 - 15.4.87
(4)	Mr. S.S. Ranade RBI Nominee Director	16.4.87 - 2.5.90
(5)	Mr. J.K. Sawhney Workman Director	1.9.84 - 31.8.87

8. It was during the period of Shri Sudershan Lal and Shri S.S. Ranade (Nominees of RBI) that the bank guarantees were extended and enhanced, as the case may be, by the New Bank of India. Notice shall also go to the said persons to show cause why appropriate action be not taken against them, by this Court, for the acts of misfeasance or non-feasance as the case may be. Notice returnable - 7th February, 1997.

9. Now, coming to the Canara Bank, it is reported by the Justice Saharya Commission that Shri B. Ratnakar was the Chairman cum Managing Director of Bank from 30.6.82 to 29.6.88. One Shri N.D. Prabhu was the Executive Director from 14.3.83 to 20.9.88. Shri M.C. Satyawadi was the Government Director from 13.9.85 to 17.10.89. So far as the Nominee Director of the Reserve Bank of India is concerned there were three persons successively

(1) Mr. R.R. Pradhan 24.4.84 - 13.5.86

(2) Dr. M.R. Kotdawala 4.2.86 - 3.2.87
(3) Mr. J.P. Awasthi 4.2.87 - 10.11.88
(4) Mr. D. Seetharama 1.8.81 - 17.8.87
Workman Director

10. The findings of the Commission with respect to the role of this bank is to the following effect:

> "Mr. R.B. Ratnakar, Chairman -cum-Managing Director, Canara Bank intentionally and with knowledge that sanction of the proposal was neither in consonance with norms nor was it for the benefit and in the interest of the bank involved the bank in the transaction" and further that "the other functionaries of the Canara Bank as named in the Issue No.2 directly and indirectly assisted the Company to get participation of Canara Bank in the un-profitable transaction and did not ensure fulfilment of the conditions contained in the guarantee." It is also found by the Commission that the aforesaid "two banks intentionally and with full knowledge sacrificed all norms, caution, care and prudence in granting the facility."

11. We are told that Shri B.R. Ratnakar is dead. The Commissioner of Police (Delhi) is required to find out who are the Legal Representatives of the said deceased and report to this Court within one week. It shall be open to the Commissioner of Police(Delhi) to seek the assistance of the Commissioner of Police (Bangalore) or any other official for this purpose. Orders with respect to the officials of this Bank shall be passed after obtaining the said information. Notice returnable - 7.2.97.

12. The report shows that there was no proper supervision by the Reserve Bank of India. It appears that when the question of extending bank guarantee by the New Bank of India to M/s Skipper Construction arose, Nominee Director of the RBI objected to it. But thereafter what happened may better be set out in the words of the said Nominee Director, in which he had submitted his report to the RBI:

> "Company made a request to the bank to issue to it a guarantee favouring DDA. The Company's financial position was bad and accounts of its associate concerns showed similar situation. Despite that, the case was placed before the Board. Even though this was once declined, the Bank resubmitted the same. It was said that Shri P.K. Kaul, the then Cabinet Secretary and Shri Buta Singh, the then Minister had spoken in favour of this case."

13. It is not known as to what the Reserve Bank of India did in the matter when it received the said note. We would like to know the action, if any, taken by the RBI against the persons and officers of the said two banks, responsible for the said transactions which have caused substantial loss to the said Banks, which are ultimately trustees of Public funds. The RBI shall file an affidavit detailing the action taken by them and all the other attendant facts and circumstances, within one week. List on 7.2.97.

SCALE (PIL) 1981-97 961
M.C.MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

Order dated October 9, 1996 in I.A.No. 18 & 22 & 32 in Writ Petition (Civil) No. 4677/85 [1997(1) SCALE (SP) 1]

PUBLIC INTEREST LITIGATION — ENVIRONMENT — RIDGE AREA — Educational and religious institutions — Court issues certain directions.

I.A.No. 18

Item 'A'

1. Pursuant to this Court's order dated september 25, 1996, Mr. D.C. Khanduri has placed on record the report which indicates that an area measuring 200 x 100 ft. is being taken from the School and added to the Ridge. This may be done within one month from today.

Item 'B'

Gurudwara behind Rajinder Nagar

2. Pursuant to this Court's order dated September 25, 1996 regarding religious institutions, Mr. Khanduri has placed his report on record. We have been taken through the report by Mr. Ranjit Kumar. According to the report, the Gurudwara Managing Committee has agreed to surrender the excess land as per the description in Sibal's Report. According to Mr. Khanduri, the excess area is 2308 sq. yds. and not about 2500 sq. yds. as mentioned in Sibal's report. The excess area as indicated in the Khanduri report be taken over by the Ridge Management Board, within one month.

Durga Mandir

3. Khanduri Report states that Mr. Kapoor, President of the Managing Committee of the temple has agreed with the recommendations of the Sibal Committee. An area of 3018 sq. yds. shall be retrieved from the Durga Mandir. This maybe done by the Ridge Management Board within one month.

Mahila Ashram and Arya Gurukul

4. Sibal Committee recommended that the approach road which covers an area of 650 sq. yds. adjoining to the Ashram should be closed. Mr. Khanduri has also recommended that the area comprising the road be closed and merged with the ridge. The Ridge Management Board to issue notice to the Ashram to show cause to this Court on October 30, 1996, why the area indicated in the Khanduri Report be not taken over from the Ashram and added to the Ridge. Notice be given before October 14, 1996. It may be further indicated that if they have to raise any objection, they may do so before this Court on October 30, 1996.

Sacha Ashram Sauda Gurudwara

5. Mr. Khanduri in his report states that the Committee has not been able to meet the representative of the Delhi Gurudwara Prabhandhak Committee. Mr. Khanduri has asked for two weeks' time. Meanwhile we direct that a notice be issued to one Mr. Balbir Singh, indicating that he is in unauthorised occupation of the Ridge Land. Copy of Sibal's report be sent along with the notice. It may be indicated that the religious scriptures etc. be shifted to the main Gurudwara, which is 150 yds. away and the unauthorised structure should be demolished and handed over to the Ridge Management Board. It may also be indicated that if they wish to raise any objection, they may do so before this Court on October 30, 1996. Notice shall be given by the Ridge Management Board by October 14, 1996. Meanwhile Khanduri Committee may meet the representative of the Delhi Gurudwara Prabhandhak Committee as indicated by Mr. Khanduri in his report.

6. To come up on October 30, 1996.

Ram Tirath Temple & another Temple of Rajinder Nagar

7. Mr. Khanduri Committee has suggested that the area of these two temples be got vacated because it is an encroached area. The report further states that the so-called temple is without any roof and the adjoining temple has only asbestos sheets and without any walls. Learned counsel appearing for the residents of the area states that the encroachment is made on the Ridge area. According to the learned counsel the area should be got vacated. It is further stated that some litigation is going on in the Subordinate Courts as well as in the High Court. We issue notice through the Ridge Management Board to show cause why they be not dispossessed and removed from the area. The notice be given by October 14, 1996 by the Ridge Management Board. In the notice it may also be indicated why the proceedings before the Subordinate Courts and the High Court be not stayed. The occupants shall show cause to this Court on October 30, 1996.

8. To come up on October 30, 1996.

Shiv Mandir

9. The Khanduri Report indicates that there is no excess land with the temple.

Baba Asa Ram Ji

10. According to the Sibal's Report and the Khanduri Report, the Management is in unauthorised possession of the total area. Khanduri Report indicates that the Management has filed Writ Petition No. 3314/1995 in the Delhi High Court. The report further states that this Court may consider leaving an area of 190 ft. x 170 ft. with the Management which comprises temple portion, office and residence and Tree Parikarma. The report further states that the remaining area may be retrieved to the Ridge. We issue notice to the Management through the Ridge Management Board to show cause why the excess area as indicated by the Khanduri Report be not taken over from the Management. The Management may raise any objection, if they so wish, before this Court on October 30, 1996. Copy of the Khanduri Report be given to the Management, if not already given.

11. To come up on October 30, 1996.

Item 'C'

12. Mr. N.N. Goswamy, learned counsel appearing for the Land & Development Office has placed on record a letter dated May 7, 1996, addressed to Smt. Prakash Kaur which is in the following terms:

"Madam,

I am directed to inform you that it has been decided to allot you a built up fuel depot measuring 61.504 sq. mts. in the Shopping Centre, M.B.Road, Sector-I, New Delhi, in lieu of site unauthorisedly occupied by you at Mandir Marg, New Delhi. The site in question is shown red on the plan annexed.

In case you want to change your business, a built up shop can instead be allotted in one of the Government Colonies viz., M.B.Road, Mohammadpur, Munirka or Sadiq Nagar, New Delhi.

The allotment in either case will be on licence fee basis for the present.

Other terms and conditions of allotment will be conveyed to you separately".

Mr. Kuldip Singh s/o Smt. Prakash Kaur is present in Court. Mr. Kuldip Singh states that Civil Writ Petition No. 330/93 is pending in the Delhi High Court. He further states that the statusquo regarding possession was granted, but despite that the construction has already been demolished by the Authorities. He, however, states that they are still occupying the area nearby. Be that as it may, 61.50 sq. metrs built up fuel depot having been allotted to Smt. Prakash Kaur in the shopping centre, she cannot be permitted to encroach on any public land. We give time to Smt. Prakash Kaur to vacate the present place in her possession by March 31, 1997, failing which she shall be removed from the area. Although, in view of the order quoted above, the interim order granted by the High Court has become infructuous, we do not wish to comment either way.

13. Copy of this order be sent to the High Court for its record.

SCALE (PIL) 1981-97 964

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHAMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — FOUNDRIES IN WEST BENGAL — Court suspends closure order in respect of 10 foundries for 10 weeks.

1. The West Bengal Pollution Control Board has placed on record its report by way of affidavit filed by Mr. Biswajit Mukherjee on behalf of the Board. It is stated in the affidavit that 14 foundries listed at pages 18 and 19 have set up the pollution control devices. We suspend the closure order in respect of these 14 foundries for 10 weeks from today to enable the Board to inspect the devices in working condition.

1. Shri Balaji Industries,
81 Benaras Rd,
Howrah - 711 100.

2. Urbasi Steel Industries Pv. Ltd.,
3, "O" Road,
Howrah.

3. A.K.Ispat Udyog Ltd.,
2/2, "O" Road,
Howrah - 711 108.

4. U.L.Iron Foundry,
60/2, "O" Road,
Belgachia,
Howrah.

5. Great Eastern Machine House,
P-55, Benaras Road,d
Howrah.

6. R.M.Industries,
Kantalia, Nibra,
Howrah - 711 409

7. Rose Island Engineering Works,
112, "B Road,"
Baungachia,
Howrah - 711 106.

8. Ma Mansha Iron Industries,
Shanpur (M),
"V" Rd., Dasnagar,
Howrah-5.

9. T.P.Shau & Sons (P) Ltd.,
44 'A' Road,
Baungachi, Salkia,
Howrah-6.

10. P.R.Industries,
70 ~X' Rd.,
Belgachia,
Howrah.

11. Sourabh Casting,
P-278, Benaras Rd.,
Belgachia,
Howrah - 711 108.

12. Makali Iron Works,
Ichapur Road,
Dasnagar,
Howrah.

13. Jaikali Iron Foundry,
Ichapur Road,
Dasnagar,
Howrah.

14. Baba Loknath Iron Foundry,
36/3, 'F' Road,
Howrah.

M/s Bharat Iron & Steel Inds.
M/s Shyam Iron & Steel Inds.

2. Delay in fling the pollution fine is condoned.

STPs & Gomti matter.

3. To be listed on 29th October, 1996.

Order dated October 11, 1996 in Writ Petition (C) No. 3727 of 1985 [1997(1) SCALE (SP) 4]

SCALE (PIL) 1981-97 965

RANJAN DEB *Petitioner*

VS

UNION OF INDIA & ORS. *Respondent*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — SEWERAGE SYSTEM IN THE CITY OF PURI — Court issues certain directions.

1. Pursuant to this Court's order dated September 24, 1996, Dr. Shyam Lal, Director in the Ministry of Environment and Forests, New Delhi has filed affidavit. Paragraphs 3.1, 3.2, 3.4 and 3.5 are as under:

3.1 The Ministry of Environment and Forests has different programmes for survey of Natural Resources, Conservation of Natural Resources including Forests and Wild Life, Environmental Impact Assessment, Prevention and control of Pollution, Hazardous Waste, Management, Research & Development etc.

3.2 The various programmes and schemes of Ministry and its associated organisations related to pollution prevention through different schemes like:

- Environment statistics and mapping
- Development and promotion of cleaner technologies
- Waste minimization
- Programme for improvement of quality of Automotive fuels
- Environmental Epidemiological studies
- Monitoring of air and water quality etc.

3.4 That the construction of sewerage systems in Puri is the responsibility of the State Government through its local bodies and accordingly the respondent humbly submits that, the State Government may kindly be directed to provide funds for that.

3.5 The respondent humbly submits that the Ministry of Environment has no such scheme from which to contribute towards construction of sewerage systems in the city of Puri".

2. The primary function of the Ministry of Environment and Forests is the "prevention and control" of pollution. The construction of a sewerage system is a major step towards the control of pollution., Apart from that, discharge of treated effluent into the sea would protect the marine life which is in abundance in the sea. In our order dated September 24, 1996, we highlighted the fact that the City of Puri the "Abode of Lord Jagannatha" is a tourist resort and of great interest even to the foreigners. The State Government has not been able to construct the sewerage system in the City of Puri till date for one reason or the other. Government of India must render all assistance to the State Government in this respect. We take judicial notice of the fact that huge amount of money is being received as foreign aid specially for the purpose of protecting the environment and controlling pollution. We have, therefore, no hesitation in reaching the conclusion that the Government of India, Ministry of Environment and Forests is in a position to extend financial help for the Project. We, therefore, request Mr. T.K.A.Nair, Secretary, Ministry of Environment and Forests to look into this matter personally and file an affidavit in this Court by October 24, 1996.

3. Copy of this order be sent to the Secretary to Government, Ministry of Environment and Forests, Government of India, New Delhi.

4. To come up on October 24, 1996.

Order dated October 10, 1996 in Writ Petition (C) No. 16/91. [1997(1) SCALE (SP) 5]

SCALE (PIL) 1981-97 966

DR. UPENDRA BAXI *Petitioners*

VS

STATE OF UTTAR PRADESH & ORS. *Respondents*

CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — RIGHTS OF WOMEN — AGRA PROTECTIVE HOME — Serious allegations made against Rescue Officer by several inmates but no action taken — Court directs the personal appearance of the Secretary, Women's Welfare Department, Govt. of Uttar Pradesh on 13.12.1996.

1. Written submissions of Shri Muralidhar are taken on record.

2. Shri Muralidhar has also pointed out certain portions of the Report of the District Judge, Agra dated 27th september, 1996 to indicate the serious irregularities which are continuing in the Agra Protective Home. One of the serious matters mentioned therein relates to Shri Ram Kushwaha, Rescue Officer, Agra against whom serious allegations have been made by several inmates and no action has been taken so far to even remove him from that place in spite of the District Judge's report to this effect made to the concerned authorities. In view of the seriousness of the matter and the apparent total apathy of the Government of Uttar Pradesh to take the necessary action to check these irregularities and the inability of learned counsel for State Government to give any response to the same, there is no option left for us except to direct the personal appearance of the Secretary, Women's Welfare Department, Government of Uttar Pradesh. We, therefore, direct that officer to remain present in person on 13th December, 1996, the next date of hearing. We also direct that the response of the Government of Uttar Pradesh be filed on affidavit by the next date, to the written submission of shri Muralidhar and the contents of the Report of the District Judge, Agra. Learned counsel for the Government of Uttar Pradesh is required to ensure presence of the concerned officer in the court on the next date of hearing.

3. List on 13th December, 1996.

Order dated December 2, 1996 in W.P. (Crl.) No. 1900/81. [1997(1) SCALE (SP) 6]

SCALE (PIL) 1981-97 966

DELHI DEVELOPMENT AUTHORITY *Petitioner*

VS

SKIPPER CONSTRUCTION AND ANR. *Respondent*

CORAM: B. P.JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — DELHI DEVELOPMENT ACT — SKIPPER CONSTRUCTION — Follow up of order reported in 1996 (6) SCALE SP5.

Order dated October 11, 1996 in IA Nos. 15, 16, 23, 24, 25, 27, 29, 30, 31, 32, 32A, 33, 34, 36 and 38-39 in SLP (C) No. 21000/93 [1997(1) SCALE (SP) 3]

1. The Embassy of Israel through its counsel Mr. Ravinder Nath has communicated today that it is not possible for it or for the Government of Israel to purchase the said property at the price mentioned by M/s Price Water House & Co., Chartered Accountants, New Delhi. In the circumstances, we have no option except to sell the said property by public auction. Accordingly, tenders shall be called for from public.

2. The D.D.A. shall ensure that a notification is published in two newspapers 'The Times of India' and 'The Statesman' in all editions, with respect to the sale of the said property. The publication shall be effected on or before 25.10.96 and the last date for submitting the tenders is 22.11.96. The notification shall mention that the minimum price shall be Rs. 28 crores. No tender quoting a lesser figure shall be considered or accepted. The notification shall further state that the building is now occupied by Israel Embassy as a tenant.

3. The tenders shall be submitted to Mr. Chandresh Bhushan, Registrar General of the Supreme Court of India in sealed covers. The tenders shall be accompanied by a demand draft for a sum of Rs. 1 crore drawn on any Nationalised Bank in India. Any tender which is not accompanied by the demand draft shall be rejected. The demand draft shall be a crossed demand draft drawn in favour of the Registrar General, Supreme Court of India. It is obvious that in case of tenders being not accepted the amount shall be returned to the tenderers.

4. Any prospective tenderer who wants to inspect the property shall approach the Registrar General. The Registrar General shall get in touch with Mr. Ravinder Nath, counsel for the Embassy of Israel and fix up two dates on which the Israel Embassy shall permit the prospective tenderers to have a look at the public areas of the property.

5. The D.D.A. shall make available the copies of plans of the property and also all relevant papers executed in favour of the Israel Embassy to the Registrar General, Supreme Court of India which shall be open to inspection by the proposed tenderers.

6. List these matters in the first week of December, 1996.

7. Letters, claims/applications received from creditors with regard to their claims against Skipper Construction Company be sent to Hon'ble Mr. Justice O. Chinnappa Reddy for consideration.

SCALE (PIL) 1981-97 967

BUFFALO TRADERS WELFARE ASSON. *Appellants*

VS

U.O.I. & ORS. *Respondents*

CORAM: KULDIP SINGH S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — SLAUGHTER HOUSE IN DELHI — New sites suggested for Delhi Slaughter House relocation — Court directs that the various sites be inspected by the various authorities and representatives of the Meat Traders' Association in order to enable them to find out the suitability and preference.

Order dated October 3, 1996 in IA No. 2 in C.A. No. 3769/96. [1997(1) SCALE (SP) 8]

1. Pursuant to this Court's order dated September 26, 1996, Mr. Omesh Saigal, Member Secretary, National Capital Region Planning Board is present in Court. He has suggested four sites where the Delhi Slaughter House can be re-located. The four said sites are as under:

	Name of Place.	Distance from Rajghat.	Area available
1.	Hasthinapur on Bagpath Road Ghaziabad	20/25 kms.	20-22
2.	Loni, Ghaziabad District,	20 kms.	Upto 40 acres
3.	Secunderabad Buland Sahar District U.P. (stated to be the best site)	about 50 kms.	20-22 acres
4.	Khurja	about 100 kms.	40 acres.

2. Mr. Maheshwari and Dr. K.M. Tiwari, Additional Director, Health, DDA, are present. Dr. K.M. Tiwari states that MCD along with the representatives of the Meat Traders' Association and representative of NCR would visit the sites to find out the suitability and preference. This may be done within one week. Mr. Maheshwari will have an affidavit of a responsible officer of MCD filed within one week. We see no difficulty in MCD operating the slaughter-houses from anywhere in the National Capital Region. It can operate the slaughter-house even from the area which is outside the city of Delhi area for the benefit of the residents of Delhi. The MCD shall also have consultation with the Principal Secretary (Home), State of Uttar Pradesh and other concerned authorities of the State of U.P. and the NCR.

3. To come up on October 11, 1996.

SCALE (PIL) 1981-97 968

M.C. MEHTA *Petitioners*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — PATRATU POWER STATION IN BIHAR — Court directs the Thermal Station to file an affidavit that all pollution control measures have been put into operation.

1. Pursuant to this Court's order dated September 18, 1996, Mr. R.P. Yadav, Chairman of the Bihar Electricity Board and Mr. Kishori Prasad, General Manager, Thermal Power Station, Patratu are present in Court. They have assured us and undertaken that the pollution control measures as indicated by them earlier before this Court shall be completed and put into operation in accordance with the time

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Order dated September 25 1996 in W.P. (C) No. 3727/85. [1997(1) SCALE (SP) 9] schedule indicated by them. We direct the Thermal Power Station to file an affidavit of a responsible officer before November 30, 1996 indicating the progress made in the execution of the project.

2. List the matter on 3rd December, 1996.

SCALE (PIL) 1981-97 969
M.C. MEHTA *Petitioner*
VS
UNION OF INDIA AND ORS. *Respondents*
CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — RIDGE AREA — Court directs the Ridge Management Board to file an affidavit clearly stating whether the construction of the Polo ground by the Army authorities is being made on the ridge area or in the area outside the ridge.

1. Learned counsel for the Ridge Management Board states that he would file an affidavit clearly stating whether the construction of the Polo ground by the Army authorities is being made on the ridge area or in the area outside the ridge. A detailed affidavit shall be filed by 11th October, 1996.

2. To come up on 11th October, 1996.

Order dated October 8, 1996 in I.A. No. 18 & 22 in W.P. (C) No. 4677/85. [1997(1) SCALE (SP) 9]

SCALE (PIL) 1981-97 969
M.C. MEHTA *Petitioners*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — TAJ TRAPEZIUM ZONE — Court issues further directions.

OFFICE REPORT DT. 1.10.96 ITEM 'A'

1. Pursuant to this Court's Order dated September 4, 1996 Mr. P.K. Sharan, Deputy Superintending Archaeologist, Archaeological Survey of India Agra Circle, Agra has filed an affidavit. Para 3 of this affidavit is as under:

> "That almost whole of Agra district and parts of Mathura, Aligarh, Etah, Ferozabad districts of U.P. and a part of Bharatpur district of Rajasthan fall within Taj Trapezium Zone. A list of centrally protected monuments located within Taj Trapezium Zone is submitted herewith as Annexure No. 1. Among these monuments namely Taj Mahal, Agra Fort and Fatehpur Sikri are also designated as World Heritage Monuments. It is pertinent to mention here that A.S.I. protects monumets of National importance & not significant monuments."

2. Annexure '1' to the affidavit is a list of the centrally protected monumets located

Order dated October 3, 1996 in W.P. (C) No. 13381/84. [1997(1) SCALE (SP) 10]

within Taj Trapezium. This Court's order dated May 10, 1996 shall operate in respect of the monuments which are listed in annexure '1'. Registry to give a copy of annexure '1'' to the learned counsel for the brick kiln owners for their information and necessary records.

3. Mr. Pradeep Misra, learned counsel for the State of UP states that the matter concerning rehabilitating the brick kiln owners is under consideration of the Government. He further states that regarding the disposal of fly ash instructions have already been issued by the UP Government. He shall place on record an affidavit regarding the scheme to rehabilitate the brick kiln operators. He shall also file a copy of the instructions regarding the fly ash within three weeks from today. To come up on 24th October, 1996.

ITEM 'B'

4. Pursuant to this Court's order dated August 7, 1996, August 13, 1996 and September 12, 1996 regarding shifting of various shops/emporia from within the Taj premises Mr. Satendra Singh Yadav, Public Relation Officer, Agra Development Authority, Agra has filed an affidavit dated October 3, 1996. In para 2 of the affidavit, the details of the sites available for the seven shops/emporia has been given. It is agreed by the learned counsel that the allotment of the space for relocation at the alternative site shall be done by way of draw of lots between them. This shall be done within one week from today. The allottees shall take over the possession within one week thereafter. All the allottees shall stop functioning at their present location on or before December 31, 1996. The Archaeological Survey of India shall take over possession of the area from the allottees on or before December 31, 1996. All allottees may remove their fixtures installed by them without damaging any part of Taj premises.

5. The Agra Development Authority has already framed Taj Beautification Plan. Mr. Satish Chandra states that there is further scope of modification in the said plan. The allottees may approach the Agra Development Authority and indicate their requirement of land which is needed by them for permanently setting up their establishments within the 'plan' area. We have no doubt that the Authority shall consider the matter sympathetically.

6. The Archaeological Survey of India shall file the compliance report by the first week of January, 1997. We make it clear that the ASI shall not permit any shopping complex to come up within the Taj premises and also within 200 metres outside and around the premises.

ITEM 'C'

7. Learned counsel for Mathura Refinery states that the Refinery was under the impression that this matter is to be listed on October 8, 1996 and he is not in a position to assist the Court properly. To come up on October 8, 1996. Learned counsel stated that he would file a short affidavit indicating the details of the time schedule within which the hospital and the mobile dispensaries are to be made operative. To come up on 8th October, 1996.

SCALE (PIL) 1981-97 970

M.C. MEHTA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

Order dated October 3, 1996 in IA Nos. 18 & 22 in W.P. (C) No. 4677/85. [1997(1) SCALE (SP)11]

PUBLIC INTEREST LITIGATION — ENVIRONMENT — 28 INDUSTRIAL AREAS IN DELHI — INSTALLATION OF CETPs — Court monitors the progress made in the installation of CETPs and issues further consequential directions.

I.A. NO. 22:

1. This Court is monitoring the construction of CETPS in respect of 28 industrial areas in Delhi for the last about one year. Pursuant to this Court's order dated September 11, 1996 Mr. Ganga Das, Principal Secretary and Commissioner, Department of Industries, Government of N.C.T. of Delhi has filed a short affidavit dated October 1, 1996. It is stated in para 1 of the affidavit that "pursuant to the orders of this Hon'ble Court dated 11.9.1996 and 26.9.1996, the Government of Delhi will provide Rs. 22.5 crores as its contribution for the construction of CETP's in the capital. The amount shall be released in terms of the directions of this Hon'ble Court.

2. Mr. Malhotra has placed on record the affidavit by Dr. Shyam Lal, Director in the Ministry of Environment and Forests. The affidavit is dated October 1, 1996. The operative part of the affidavit it as under:-

> "3. According to the Scheme, a maximum amount of Rs. 50 lakhs per CETP or 25% of the cost of CETP, whichever is less, could be made available as central subsidy subject to the matching grant made available by the State Government. An administrative decision has already been taken to raise the central subsidy from Rs. 50 lakhs to Rs. 1.00 crore. As such, Central Government would be in a position to sanction a total of Rs. 15 crores for fifteen CETPs to be set up by the Government of Delhi/DPCC. An amount of Rs. 3.00 crores are available as per the Budget Estimates of MOEF for the financial year 1996-97, which is being revised to Rs. 18 crores and the matter is under consideration from financial angle for re-appropriation purposes. Out of the available funds of Rs. 3.00 crores in the current financial year, a sanction order for release of Rs. 2.80 crores as the first instalment for the construction of CETPs has been issued on 1.10.96 (Annexure-I).
>
> The remaining amount would be released after the necessary re-appropriation is done from financial angle as also depending upon the progress of work."

3. It is obvious from what is stated in the affidavit of Dr. Shyam Lal that Government of India has sanctioned Rs. 15 crores for the 15 CETPs to be set up by the Government of Delhi and DPCC. We make it clear that there are 28 industrial estates which are to be provided with the CETPs. Initially 28 CETPs were to be constructed and in that eventuality the Government of India's contribution (Rs. 1.00 crore for one CETP) would have come to Rs. 28 crores. NEERI has devised the whole project in such a way that in stead of 28 CETPs, 15 CETPs are being set up to cater the need of all the 28 industrial estates. In this view of the matter, even on the basis of the policy of the Government of India it is required to contribute the total amount of Rs. 22.5 crores. Mr. Malhotra, learned counsel appearing for the Union of India, has very fairly stated that the matter is under consideration and the Union of India shall finally sanction Rs. 22.5 crores to meet the requirement of the project. We have no doubt that the Government of India would be in a position to contribute Rs. 22.5 crores towards the project-costs.

4. Dr. Singhvi, appearing for the IDBI, has again brought to our notice the cumbersome procedure which is required to be followed by the industries before they are entitled to the benefit of the loan to be advanced by the IDBI. We have considered this aspect in various earlier orders passed by this Court. Be that as it may, Dr. Singhvi has brought to our notice the five requirements under the scheme. He states that industries must form societies, the efficacy of the treatment plant should be certified by the authority, financial analysis to be done, unit wise contribution has to be indicated and accounting parameters including D.S.C.R./ D.E.R. are to be indicated. It is clear from the record that all the requirements of IDBI have already been substantially complied with. A comprehensive NEERI report is already on the record. A copy of the report has already been given to IDBI for ready reference. The position regarding the capital cost in respect of each CEPT as indicated by NEERI is as under:-

STATUS REPORT REGARDING INDUSTRIAL AREAS
WHERE CETPS ARE ADVISED BY NEERI

S. NO.	CETP	INDUSTRIAL AREA COVERED	CAPITAL COST RS. IN LAKHS	SOCIETY FORMED OR NOT
1.	Anand Parbat	Anand Parbat	772.98	Yes
2.	Badli	Badli	671.51	Yes.
3.	DSIDC, Nangloi	i)DSIDC, Nangloi ii) Udyog Nagar	466.31	Yes
4.	*G.T.K. Road	G.T.K. Road	563.5	Under Process
5.	*Jhilmil	i) Jhilmil ii) Friends Colony	157.81 Process	Under
6.	Lawrance Road	Lawrance Road	400.73	Yes
7.	Mangolpuri	Mangolpuri	137.47	Yes
8.	Mayapuri	Mayapuri	436.56	Yes
9.	Mohan Co.op	Mohan Co.op	466.10	Yes
10.	Najafgarh Rd.	i) Najafgarh ii) Moti Ng. DLF	253.24	Yes
11.	Naraina	i) Naraina ii) Kirti Ngr.	714.93	Yes
12.	Okhla	Okhla	802.20	Yes
13.	Okhla Estate	Okhla Estate	457.99	Yes
14.	*SMA Indl. Area	i) SSI ii)SMA iii) Raj. Udyog Ngr.	978.53	Under Process
15.	Wazirpur	Wazirpur	937.26	Yes

* Information of Societies: As per Delhi Factory Owner's Federation.
No. of industries in the Industrial Areas :20000
No. of Industries who have submitted information to NEERI for cost appointment : 1005

5. So far as the objections of IDBI are concerned, the NEERI report meets all the objections. The details indicated above show that societies in 12 industrial areas have already been constituted and the remaining three areas is in the process. The capital cost has also been indicated. The treatment plant efficacy and the financial analysis has been given in detail by the NEERI in its report. So far as unit wise contribution is concerned, NEERI is in the process of finalising it and it shall be placed on the record shortly.

6. We request Mr. Kaushal to get in touch with Dr. Khanna, Director, NEERI on telephone and find out within how much time the necessary report would be ready. For further directions to be listed on 8th October, 1996 at 2.00 p.m.

SCALE (PIL) 1981-97 973

M.C. MEHTA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — TAJ TRAPEZIUM — Court earlier had directed continuous supply of electricity and better security — Court records it satisfaction on the grant of additional money for electricity and also of measures undertaken to provide security to the Taj Trapezium.

Item 'A' Of the Office Report dt. 23-9-1996

1. Pursuant to this Court's order dated September 4, 1996 with regard to continuous supply of electricity in the city of Agra, learned counsel appearing for the Ministry of Power has placed on record a letter dated September 19, 1996 addressed to the Chief Secretary, Government of Uttar Pradesh by Mr. K.M. Lal, Adviser (SP), Planning Commission, New Delhi. The letter states that keeping in view the order of this Court dated September 4, 1996, the Planning Commission has agreed for additional provision of Rs. 90 crores for power sector transmission and distribution in order to implement the order of this Court for the protection of Taj Trapezium.

2. The amount having been supplied, nothing more is required to be done towards supplying funds for the projects. We direct the Secretary, Energy, Government of Uttar Pradesh and the UP Electricity Board through its Chairman to go ahead with the project and complete the same within the time schedule as already indicated by them in this Court. A responsible officer of the UP Electricity Board shall file an affidavit indicating the progress made in this respect before October 30, 1996.

3. List the matter on 31st October, 1996.

Item 'B'

New Item 'Vandalism at the Taj and the Fort'

4. Pursuant to this Court's order dated August 7, 1996 and September 4, 1996, an affidavit has been filed by Mr. P.K. Sharan, Deputy Superintending Archaeologist, on behalf of the Director General, Archaeological Survey of India. It is stated that several measures which are being undertaken to provide security to the Taj Trapezium have been indicated in the affidavit. Nothing more need be done in this matter. This is closed.

Order dated September 25, 1996 in W.P. (C) No. 13381/84. [1997(1) SCALE (SP) 14]

SCALE (PIL) 1981-97 974
M.C. MEHTA *Petitioner*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — DELHI AREA — Court records progress made in regard to water resources, industries running in residential areas of Delhi/New Delhi and schools and places of religious worship existing in the ridge area in Delhi.

(A) I.A. 32: Reg. Ground Water Level

1. Pursuant to this Court's order dated September 4, 1996 NEERI has placed on record its examination report under the heading "Water Resource Management in India : Present Status and Solution Paradigm". A copy of the report has been given to the learned counsel for the Union of India. We direct the Government of India through Ministry of Water Resources to give its response to the NEERI report and in particular paragraphs 4.1, 4.2, 4.4, 4.5, 5, 6 and 7.

2. To come up on 9th October, 1996.

(B) I.A. 22: Reg. Industries running in residential areas of Delhi/New Delhi.

3. Mr. Kaushal, learned counsel for the NCT, Delhi Administration states that the process of screening the industries which are running in the residential areas of Delhi is almost complete. He states that the data is being compiled. He further states that he would be in a position to place a clear position in this Court within a week.

4. To come up on 9th October, 1996.

(C) Reg. Hot Mix Plants

5. To come up on 27th September, 1996.

I.A.18:

(D) D.I. Khan Senior Secondary School.

6. Pursuant to this Court's order dated September, 1996 Mr. Khanduri, Secretary of the Ridge Management Board has submitted his report regarding the D.I. Khan Senior Secondary School. The report is as under:-

"In pursuance of the above directions, spot inspection was carried out, after informing the Management of the School as per direction of this Hon'ble Court. The additional area allotted to the school in 1966 was got marked on the ground. It will be worthwhile to mention that this additional area of about 2 acres is in shape of a rectangle, having length of 345 feet and width of 225 feet. Thus the area in additional land works out to 8625 sq. yards, which is less than two acres.

A field sketch of the area (not to the scale) is attached with this report. It will be seen that a small nala passes through this land and cuts it into two unequal halves. On inspection it was observed that this smaller half, which is in shape of a triangle and has an area of 2415 sq. yards is part of the natural forest, and is not being used by the school for playground or any other purpose. The area has rocky outcrop and merges with the ridge forest. However, the another half which is in shape of a Trapezium and has the balance area of 6210 sq. yards is being used by the school for playgrounds, of Basketball, Kabaddi etc. It is more or less flat with very less slope and therefore this area merges with the original area of 4.5 Acre. In fact the land and its land use of this part of the additional area is in no way different than the unbuilt area of the

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Order dated September 25, 1996 in I.A. No. 18 & 22 in W.P. (C) No. 4677/85. [1997(1) SCALE (SP) 14] original land of 4.5. Acre, and it is difficult to separate the two on visual inspection."

7. We have heard learned counsel for the school. We direct the school to retain possession of 6210 sq. yds as indicated by Mr. Khanduri in the field sketch attached with the report. The remaining area which has been marked as 'B' in the sketch shall be taken over by the Ridge Management Board and added to the ridge. The Ridge Management Board shall take over this area within one month, fence it and plant the trees, if necessary.

(E) Harcourt Butler School

8. Regarding Harcourt Butler School, Mr. NN Goswami states that area admeasuring 3 acres was allotted to the school. He has placed the copy of the lease deed alongwith the report. A copy of the lease deed is given to the learned counsel for the Ridge Management Board. We direct Mr. Khanduri to inspect the school area and file a report indicating how much area in excess of the allotment is under the possession of the school. This may be done within two weeks.

9. To come up on 9th October, 1996.

(F) Reg. Religious Institutions

10. This Court by the order dated July 26, 1996 requested three senior lawyers of this Court namely Mr. Kapil Sibal and Mr. Arun Jaitley and Mr. Krishan Mahajan, to visit the ridge area, contact the managements of various religious institutions in possession of the ridge area and find out whether any area can be retrieved by agreement. We have two reports before us. One by Mr. Kapil Sibal and Mr. Arun Jaitley and the other by Mr. Krishan Mahajan. Mr. Krishan Mahajan has by and large agreed with the other report except Item 7 "Encroachment by Baba Asa Ram Ji". Copies of these two reports be given to Mr. Khanduri, Secretary, Ridge Management Board. Mr. Khanduri alongwith Mr. B.L. Nimesh, L & D.O. and Mr. US Jolly, D.D.A. shall contact the management of these religious institutions and hand over copies of the reports to them. So far as Sacha Sauda Gurudwara is concerned, Sibal report has suggested two alternatives. We propose to accept the first alternative. Mr. Khanduri and party shall contact the Delhi Gurudwara Prabhandhak Committee and apprise the Committee about the report. Mr. Khanduri shall after consulting the Committee, advise this Court regarding the action to be taken in this respect. So far as Dera Baba Asa Ram Ji is concerned, we propose that the area comprising the temple, the trees and some reasonable area around the complex be left to the management and the remaining area to be taken over from the Dera. Mr. Khanduri shall discuss the matter with the management by bringing the two reports to its notice. Report to be filed before the next hearing.

11. To come up on 9th October, 1996.

Reg. Petrol Pumps

12. List on 1st October, 1996.

SCALE (PIL) 1981-97 975

IN THE MATTER OF:

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA *Respondents/Applicant*

CORAM: KULDIP SINGH VS S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — HAZARDOUS, NOXIOUS, HEAVY

Order dated December 4, 1996 in I.A. No. 36 in W.P. (C) No. 4677 of 1985. [1997(1) SCALE (SP) 16]

AND LARGE INDUSTRIES IN DELHI — Closure and relocation — Court issues further directions in furtherance of its order dated May 10, 1996.

1. This Interlocutory Application for directions has been filed by the Union of India. Mr. Altaf Ahmad, learned Additional Solicitor General has raised the following contentions:

(1) The directions given by this Court in the order dated May 10, 1996 in I.A. No. 22 regarding land-use-utilization of land available as a result of shifting/relocation/closure of hazardous/noxious/heavy/large industries from Delhi are applicable to those industries also which are not relocating and are simply closing themselves.

(2) The industries which are not relocating and intend to start new conforming industry/activity shall not be permitted to do that unless they protect the workmen and seek fresh permission to set up the industry from the Government and the Pollution Control Board/Committee. They shall have to obtain fresh electric and water connections.

(3) The package of compensation proposed for the workmen employed in the industries which are not relocating and are closing down is inadequate and need to be enhanced.

(4) That the workmen who have not been provided residential accommodation by the employers be permitted to continue to occupy the same till accommodation is provided/made available at the relocated site. Such workmen employed with the industries which are not relocating should also be permitted to stay for a reasonable time.

2. So far as the first contention is concerned, learned Additional Solicitor General has taken us through the order of this Court in I.A. No. 22. dated May 10, 1996 regarding land-use along with the order dated July 8, 1996 regarding relocation of 168 industries. The intention of this Court is clear that the order regarding land re-use was both for re-locating industries as well as those which decide to close down and not to relocate. The learned counsel for the industries have not disputed this interpretation. We, therefore, accept the contention of learned Additional Solicitor General. Nothing more need be said on this point.

3. We see considerable force in the contention of the learned Additional Solicitor General on the second point also. The existing hazardous industries having been closed. What remains is the plot, super-structure and the workmen. The occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of new industry. Needless to say that no industry can be set up which is not permitted under the Master Plan. The procedure required for setting up of a new industry shall have to be followed in every case We make it clear that Government permission and the consent from the Pollution Control Board/ Committee, if required under law, shall have to be obtained. Even fresh electric connection and water connection shall have to be applied and obtained in the changed circumstances. We have no doubt when approached for necessary permission/licence/water/electric connection the authorities shall expedite in dealing with the applications.

4. So far as the third contention of the learned Additional Solicitor General is concerned, we may refer to direction No. 9(d) of the order dated July 8, 1996 which is as under:

> "The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from 30.11.1996 provided they

> have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation".

5. We have heard Mr. Rajinder Sachhar, Mr. Jitender Sharma, and other learned counsel appearing for the workman. We have also heard Mr. Deepankar Gupta, Mr. Shanti Bhushan and other learned counsel for the Industries.

6. We are of the view that the compensation provided in the above quoted direction is on the lower side in the facts and circumstances of the situation. We may mention that during the long period of about 3 years, when this Court has been monitoring the matter pertaining to the shifting of hazardous industries from the city of Delhi, the objective in view was to re-locate all the industries so that the development of the industries as well as the environment and the interests of the workmen are safeguarded. It is no doubt correct that some of the industries have opted to relocate, but there are many who have not till date taken any steps towards relocation. Mr. Deepankar Gupta, learned counsel appearing for M/s. Birla Textiles has stated that for various reasons including financial, the industry has decided not to relocate and as such it would have to retrench aproximately 2,800 workmen. Similarly, Mr. Shanti Bhushan states that the industry he represents is dependent on peculiar location. According to him the industry shall have to be closed. On our suggestion, learned counsel state that the industries shall have a fresh look into the matter. We would appreciate if in the interest of development of the industry, these big industrialists take a decision to relocate, specially when all the facilities regarding land etc. are being offered to them. Any way, this is a matter which concerns the industries. Keeping in view all the facts and circumstances of this case, we are of the view that the interest of the workmen would be met if we substitute the words "one year's wages" in the last line of direction 9(d) quoted above with "six year's wages". The net result would be that the workmen referred to in direction 9(d) shall be paid in addition, six years wages as additional compensation in place of one year's wages as initially directed by us.

7. We, however, clarify that six years' wages as modified by us shall only be payable to workmen of those industries which are not relocating and which have closed down. The workmen of industries who refuse to be relocated along with the relocating industries shall be entitled to one year's wages as additional compensation as originally directed.

8. We further direct that the workmen who are occupying the residential quarters provided by the employer shall continue to occupy till the accommodation is provided or made available at the sites the industry is relocated.

9. So far as closing industries are concerned, the workmen shall be entitled to remain in the quarters for a period of 1 1/2 years. In case the industry wants to compensate them in lieu of occupation of quarters, they shall pay a sum of Rs. 20,000/- (Rs. twenty thousand) to each of the workmen for asking them for immediate vacation. The enhanced compensation under the modified direction No. 9(d) be paid by April 30, 1997. It would be open to the Management to pay the amount in instalments. But the total amount must be paid before April 30, 1997.

10. We are informed that 'one window' procedure and other directions regarding providing facilities and incentives is not to be expedited by the NCT Delhi

Administration. We direct all the authorities concerned to comply with our directions and monitor the same expeditiously.

11. The industries which are closed and have been sealed by the authorities shall be unsealed so that the machinery etc. can be removed. They shall not, however, be permitted to function.

12. The application is disposed of with the above directions.

SCALE (PIL) 1981-97 978

BALJIT SINGH MALIK *Petitioners*

VS

DELHI GOLF CLUB & ORS. *Respondents*

CORAM: J.S. VERMA AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — ANCIENT MONUMENTS — Ancient monuments in the Delhi Golf Club and their upkeep — Arrears of property taxes alleged to be due from the Club — Whether these and other extraordinary benefits granted to the Delhi Golf Club at public expense and to public detriment result from the fact that many of the persons entrusted with the task of taking decisions in such matters being members of the Club appear to be interested in the same — Court issues notice to the Government of N.C.T. of Delhi and directs the matter be listed on 18.3.1997.

1. Learned counsel for the Archaeological Survey of India (ASI) submits that only one ancient monument known as Lal Bangla in that area is declared as a 'National Monument' and, therefore, the ASI is responsible only for the proper preservation, etc. of the Lal Bangla, while the remaining ancient monuments are the responsibility of the Department of Archaeology of the Government of N.C.T. of Delhi. For this reason, we direct issue of notice to the Government of N.C.T. of Delhi.

2. The submission of Shri Muralidhar, learned amicus curiae is that the lease in favour of the Delhi Golf Club had expired on 31.12.1990 and the same was renewed for a period of 20 years on 20th July, 1994, with retrospective effect to cover the period of the gap after the date of its expiry. He also states that the renewal of the lease is on unusual terms which confer extraordinary benefits to the Delhi Golf Club and thereby result in distribution of the State largess arbitrarily to the Delhi Golf Club. He also states that undue favour to the Delhi Golf Club is also evident from the fact that the arrears of property taxes alleged to be due from the Delhi Golf Club upto the year 1995 are approximately Rs. 4.5 crores. He submits that these and other extraordinary benefits granted to the Delhi Golf Club at public expense and to public detriment result from the fact that many of the persons entrusted with the task of taking decisions in such matters being members of the Club appear to be interested in the same.

3. In our opinion, it would be more appropriate to examine the above submissions made by the learned amicums curiae in the light of specific instances which may be given in writing, after taking the response of the Delhi Golf Club and the concerned authorities to the same.

4. Shri Shankardas, learned counsel for the Delhi Golf Club assures us that the

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Order dated January 21, 1997 in W.P. (C) No. 744/94. [1997(1) SCALE (SP) 19] authorities of the Club would ensure in the meantime that if there be any legitimate dues remaining to be paid by the Club under any head, the same would be paid promptly. He adds that according to his instructions the Club has not been remiss in the performance of this duty and the office bearers are alive to their responsibility in this behalf.

5. Shri Muralidhar submits that he will file in writing the specific issues for consideration with reference to the submissions made by him within two weeks. Response be filed by the concerned authorities on the other side within two weeks thereafter.

6. List on 18th March, 1997.

SCALE (PIL) 1981-97 979

INDIAN COUNCIL FOR ENVIROLEGAL ACTION & ORS. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, CJI. AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — Pursuant to Court's order of 29.11.96 affidavit filed by Pollution Control Board showing the nature of pollution caused by 40 more industries — Court issues notice to 37 industries which were stated to be polluting industries — Court also permits certain industries to treat effluents in their own ETPs instead of sending their waste to the CETP — Court issues notice to the CETP, which according to the report of the District Judge, was itself a major contributor to pollution.

1. On 29.11.96 we passed an order that an affidavit should be filed indicating how many of the 40 industries mentioned in the earlier affidavit were responsible for pollution. The Environmental Engineer of the A.P. Pollution Control Board has filed an affidavit and has appended thereto a statement showing the nature of pollution by each of these 40 industries. From the statement it appears clear that Industries Nos. 3, 10 and 11 are not causing any pollution, the first does not discharge any industrial effluent whatsoever whereas the other two have provided full-fledged ETPs and are treating their effluents in their own ETPs and thereafter using the water for the purposes of irrigating in their own land. Therefore, barring industries at Serial Nos. 3, 10 and 11, notices will go to the remaining 37 industries to show-cause why action for discharge of effluents harmful to agriculture and livestock should not be taken. The notices may be served through the A.P. Pollution Control Board.

2. The Report of the learned District Judge dated 23.10.96 is exhaustive and it indicates the extent of pollution hazards to agriculture and livestock which takes place on account of the discharge of effluents by the industries located in that area. Some of the industries have been contending that even though they have their own ETPs they are being compelled to use CETP the capacity whereof is limited and as a result thereof the effluents not brought below the tolerance level are discharged for which they are being blamed. M/s. Asian Paints (India) Ltd. and M/s Standard Organics have their own ETPs which have the capacity to treat their effluents and bringing them below the tolerance level before discharge. In addition thereto, M/s

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Order dated January 27, 1997 in IA No. 2 in W.P. (C) No. 1056/90 [1997(1) SCALE (SP) 21]

Reliance Cellulose Products Ltd., Sri Saibaba Cellulose Pvt. Ltd., Bhagyanagar Oil Refineries Ltd., Neuland Laboratories Ltd. and M/s Asian Paints (India) Ltd. have been mentioned in the Report of the District Judge.

3. Out of these industries, so far as M/s Standard Organics is concerned the Report of the District Judge shows that the TSS was 1569 and beyond its capacity. The learned counsel for the said industry states that they are trying to expand their capacity but till they do so they cannot be exonerated. So far as the other industries are concerned, in view of the Report of the learned District Judge we direct that they may be permitted to treat their effluents at their own ETPs under supervision of the Pollution Board so that the load on the PETL also described as CETL can be reduced since it is not able to take the full load. However, the Pollution Board will keep strict vigilence on these industries so that the effluents discharged after treatment at their plants are below the tolerance level. So far as M/s Voltas Ltd. is concerned the learned District Judge has stated in his Report that it had discharged effluents which were not treated and brought below the tolerance level. Mr. Salve, the learned counsel for the said Company, has explained that this was on account of excessive rain on 4.9.96 and as a result the effluent had escaped by overflow but they have taken care to ensure that even in such an eventuality it does not escape. The Pollution Board will inspect the factory and satisfy itself whether the Company had taken sufficient steps to safeguard against the escape of untreated effluents even in such an eventuality.

4. The grievance made by some of the industries is that the compensation fixed by the State Government which the concerned industries are required to pay has not been based on the extent of pollution caused by these industries. A guideline needs to be given in this behalf. We think it appropriate that the learned District Judge, who has furnished a Report, should work out the guidelines on the basis of which the compensation may be determined and recovered from the defaulting industries. The guidelines so fixed by the District Judge may be conveyed to the State Government and the State Government may determine the compensation inconformity therewith. The industries will pay the compensation as determined and if on account of the guidelines there is a redetermination which takes place and surplus payment is made that may be adjusted. The learned counsel for M/s VBC Ferro Alloys and M/s Hindustan Fluorocarbons Ltd. point out that the said Companies are not discharging any effluents and that is also the statement made by the Pollution Board. We have taken note of the same and the notices so far as they are concerned would stand discharged.

5. While concluding the Report the learned District Judge has pointed out that PETL (also described as CETL) is by itself a major contributor for pollution. It seems that it has undertaken the responsibility of treating pollutants beyond its capacity. That is the reason why we have permitted some of the industries which have their own ETPs to use them rather than make them to send their effluents for treatment of PETL. Unfortunately, PETL also contracted to treat the pollutants of industries from Karnataka when its capacity was limited. The Report says that a small partially commissioned only CETP for 128 industries is causing havoc. These industries have no individual pollution control devices and those which have them have not put them into operation. The next result is that the pollution of staggering dimension is taking place causing untold miseries to innocent rural humanity. The learned counsel for A.P. Pollution Control Board states that they have issued notices to PETL and PETL has assured that they would remedy the situation by the end of March,

1997. It is necessary to look into this matter. We, therefore, direct notices to issue to PETL. The PETL will place all the relevant facts before this Court and explain why action should not be taken against it for discharging untreated effluents into the streams which are main source of water supply to the residents of several down stream villages. All the notices hereinbefore mentioned shall be returnable within four weeks.

SCALE (PIL) 1981-97
981

BUFFALO TRADERS WELFARE ASSON. *Appellant*

VS

U.O.I. & ORS. *Respondents*

CORAM: S.P. BHARUCHA AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — IDGAH SLAUGHTER HOUSE — Closure of — Order reported in 1996 (8) SCALE 665 — Conflict between order dated 19.2.96 passed by this bench and orders dated 8.7.96, 6.8.96, 16.9.96 and 30.11.96 (read together) passed by a bench of two other learned Judges — Which order should prevail — Court orders that papers be placed before the learned Chief Justice for requisite orders.

1. Issue notice on all the Interlocutory applications.

2. The following advocates accept notice on behalf of the respondents:

Mr. A.K. Srivastava on behalf of Union of India, National Capital Territory of Delhi and Lt. Governor of the National Capital Territory of Delhi.

Mr. R.K. Maheshwari on behalf of the M.C.D.

Mr. K.C. Dua on behalf of respondent No.8 Vidya Rattan Soni.

Mr. Sushil Kr. Jain (Intervenor) on behalf of Society for Scientific and Ethical Living.

Mr. VB Saharya on behalf of intervenor (D.D.A.)

Mr. Hardeep Singh Anand on behalf of Enen Edible Pvt. Ltd.

Mr. Manoj Swarup on behalf of U.P.S.I.D.C.

Mrs. Seema Midha on behalf of Maneka Gandhi.

3. It appears, prima facie, that there is a conflict between the order dated 19.2.96 passed by this bench in these appeals and the orders dated 8.7.96, 6.8.96, 16.9.96 and 30.11.96 (read together) passed by a bench of two other learned judges in WP No. 4677/87, IA. No. 2 in C.A. No. 3769/96 and IA. No. 3 in CA. No. 3774/96. Which order should prevail or what other order should be passed should, appropriately, be decided by a bench of three learned judges.

4. The facts and circumstances suggest that this question should be resolved expeditiously.

5. The papers in these I.As. shall, therefore, be placed before the learned Chief Justice for requisite orders.

Order dated January 17, 1997 in I.A. Nos. 4, 5 & 6 in C.A. No. 3769/96 & 3774/96 [1997(1) SCALE (SP) 23]

SCALE (PIL) 1981-97 982
M.C. MEHTA *Petitioner*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — PATRATU THERMAL POWER STATION — Monitoring of pollution control devices — Court transfers the matter to Patna High Court.

W.P. (C) No. 3727/85
REG: M/S. PATRATU THERMAL POWER STATION

1. This Court has been monitoring the construction of pollution control devices by the Patratu Thermal Power Station. Various orders passed by this Court from February 9, 1993 to August 22, 1996 (XVI orders) have been reproduced in the office report dated August 27, 1996. Thereafter this Court passed detailed order on September 18, 1996. On September 25, 1996 Mr. RP Yadav, Chairman, Bihar Electricity Board and Mr. Kishori Prasad, General Manager, Thermal Power Station, Patratu were personally present in Court. They assured this Court and gave an undertaking that the pollution control measures shall be completed and put into operation in accordance with the time schedule already filed in this Court. The matter stands adjourned to December 3, 1996.

2. Since the time schedule for construction of Pollution Control Devices has already been filed by the authorities, what remains to be done is to monitor the matter for some time more. We are of the view that the High Court at Patna would be in a better position to monitor the construction of the pollution control devices by the Industry. We, therefore, transfer this matter to Patna High Court to be treated as a writ petition under Article 226 of the Constitution of India and be dealt with in accordance with law. The Registry of the High Court shall inform the parties to appear before the High Court on December 3, 1996 the date already fixed by this Court.

3. The side issue in this matter is the rehabilitation of the oustees from the land which has been acquired for the purpose of construction of fly ash ponds. The High Court may look into this aspect while monitoring the matter.

4. The Registry to send all the necessary papers alongwith all our orders to the Patna High Court within one week from today.

5. The issue regarding M/s. Patratu Thermal Power Station is disposed of.

TRANSFER CASE (C) NOS. 4 AND 5/94:

6. The transferred cases may also be sent back to the High Court to be dealt with in accordance with law. The same are disposed of accordingly.

Order dated October 10, 1997 in W.P. (C) No. 3727/85 [1997(1) SCALE (SP) 28]

SCALE (PIL) 1981-97 982
M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

Order dated November 22, 1996 in W.P. (C) No. 3727 of 1985 [1997(1) SCALE (SP) 29]

PUBLIC INTEREST LITIGATION — ENVIRONMENT — HAZARDOUS INDUSTRIES IN WEST BENGAL — Court issues directions regarding the status reports already filed.

1. The West Bengal Pollution Control Board has placed on record status report by way of an affidavit of Mr. Biswajit Mukherjee. So far as M/s. Bengal Paper Mills, M/s. Birla Jute & Industries Ltd., M/s. Shaw Wallace & Co. Ltd. and M/s. Metal and Steel Factory, Ichapur are concerned, they have met the prescribed minimum standards as indicated in the report.

2. So far as M/s. Birla Carbide and Gases, Village & Post Birlapur is concerned, the report indicates that they have not yet fully installed the pollution control devices. This Court by the order dated April 12, 1996 directed the industry to set up the pollution control devices in every respect within four weeks from that date. Learned counsel for the industry states that since the last inspection by the Board it has been done. The Board may inspect the industry and file a report within 10 days. List this matter on December 2, 1996.

3. So far as M/s. Eastern Railway is concerned, the work regarding Howrah Railway Station is progressing in accordance with the schedule. However, the following three units of the Railway have not set up the necessary pollution control system.

1. Liluah Workshop situated at Liluah, Howrah under Eastern Railway.
2. Kanchrapara Workshop situated at Kanchrapara under Eastern Railway.
3. Kharagpur Workshop situated at Karagpur, Midnapore under S.E. Railway.

4. Issue notice to the General Manager, Eastern Railway and South Eastern Railway, returnable on December 2, 1996, indicating why pollution fine be not imposed on them. Notice be served through the West Bengal Pollution Control Board.

5. So far as M/s. ISCO, Burnpur Works, P.O. Burnpur, district Burdwan, West Bengal is concerned, it is stated in the report that the industry has commissioned air pollution control system peremptorily and the results of the gaseous emissions of different stacks have also met the norms, save and except Coke Oven Battery No. 10. We direct that the said Coke Oven Battery shall not be commissioned or put into operation without prior permission of the West Bengal Pollution Control Board.

6. The contempt notices issued to the officers of this company are discharged.

7. Pursuant to this Court's order dated August 6, 1996 it is stated that M/s. Hindustan Fertilizer Corporation Ltd., Durgapur Unit is operating on oil. Although the particulate matters are under control because of change of fuel from coal to oil, so far as other gases being emitted by the industry are concerned, the West Bengal Pollution Control Board has not done the inspection. The Board may do it within one week and place the report on the record of this Court before December 2, 1996. List the matter on December 2, 1996. Meanwhile, Mr. Dutta states that he would file revised schedule regarding construction/ completion of the permanent pollution control devices.

8. The matter regarding thermal power plants in the West Bengal be also listed on December 2, 1996.

9. The matter regarding Nagrik Manch be listed on 26.11.1996.

10. Statute report regarding sugar mills to the extent the UP Pollution Board can managed to be placed on record by 6th December, 1996. List the matter regarding sugar mills in the State of UP be listed on December 6, 1996.

SCALE (PIL) 1981-97 984
M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondent*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — AGRA REGION — Court makes certain observations on progress made in the control of pollution.

Item 'A'

1. List on November 26, 1996

Item 'B'

2. Mathura Refinery has placed on record the mile-stone scheduled for Mathura Refinery for 50 bedded hospital project. The project commenced on October 1, 1996. It is stated that all the six stages of the hospital indicated in the schedule shall be complete by August 30, 1999. By and large, we agree with the schedule. We direct that the construction of the hospital shall be complete by December 31, 1998 and the hospital shall be commissioned fully thereafter within 3 months. By April 1, 1999 the hospital should be admitting and treating patients of the area. We direct the Mathura Refinery to keep on filing the progress report after every 4 months.

Item 'C'

3. Pursuant to this Court's order dated October 29, 1996 regarding brick-kiln operators, Mr. Pradeep Mishra states that the matter is being examined at the level of the U.P. Government. Mr. Mishra further states that all the thermal power stations have been directed to supply fly-ash free of charge to the brick-kiln owners.

4. Pursuant to this Court's order dated November 1, 1996, an affidavit has been filed by R.N. Paliwal, Special Secretary, Department of Urban Development, Government of U.P., Lucknow. It is stated that as desired by this Court, the matter regarding garbage disposal and cleanliness of the city of Agra was considered by the Secretary, Department of Urban Development, Chief Secretary, State of U.P. and the Governor of U.P. In the affidavit, 14 measures adopted in doing the needful have been listed. It is stated that one Manoj Singh has been appointed as Mukhya Nagar Nigam Adhikari, Agra and a Special Committee has been appointed to look into the matter.

5. We direct the Central Pollution Control Board to send an inspection team to Agra and file report in this respect within 10 days.

6. To come up on December 3, 1996.

Order dated November 22, 1996 in W.P. (C) No. 13381/84 [1997(1) SCALE (SP) 30]

SCALE (PIL) 1981-97 984
M.C. MEHTA *Petitioner*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — HAZARDOUS INDUSTRIES IN DELHI — HOT MIX PLANTS — Court orders closure of 43 Hot Mix Plants and also issues certain other consequential directions.

Order dated October 10, 1996 in I.A. No. 22 in W.P. (C) No. 4677 of 1985 [1997(1) SCALE (SP) 31]

REGARDING HOT MIX PLANTS:

1. This Court by the order dated March 13, 1996 directed the Central Pollution Control Board (the Board) to issue show cause notices to the Hot Mix Plants located in Delhi as to why they be not relocated. The Board issued notices dated march 26, 1996 to the Hot Mix Plants. Copy of the notice has been placed on the record. After considering the replies/objections filed by 36 Hot Mix Plants located in Delhi, the Expert Committee of the Board came to the following conclusion:

> "The process emissions from Hot Mix Plants contain particulate matter and sulphur dioxide besides Poly Aromatic Hydrocarbons, most of which are proven carcinogens. Therefore, the Expert Committee of CPCB has categorised Hot Mix plants as hazardous industry (Ha - Category). As per Master Plan-2001, all hazardous/noxious industries should be shifted out of the UT of Delhi.
>
> Most of the Hot Mix Plants belonging to Govt. as well as private sectors are located near residential areas and therefore, such installations pose severe health risks to inhabitants nearby (Lal Kuan, Rangpuri, Mehrauli, Khyalla).
>
> The general house-keeping of most of the Hot Mix plants is poor with no concern for environmental protection.
>
> The admission data of a Hot Mix plant equipped with pollution control device and the ambient air quality data near the hot mix plant, as reported, speak of severe pollution due to particulate matter beyond prescribed limit.
>
> Regarding the question of temperature fall of Hot Mix during transportation to long distances, it is the considered opinion of the Expert Committee that even if Hot Mix plants are located outside Delhi, except during severe winter, the quality of mix is not expected to fall if the desired temperature of the Hot Mix containers are maintained. Therefore, relocation of Hot Mix plants will not pose any service problem."

2. The Board has further placed on record the analysis report regarding extent of pollution created by each of the Hot Mix Plants. To illustrate the analysis in respect of two Hot Mix Plants is as under:

"S.No.	Name and Address	Date of Objection	Objection
01.	H.M.P. (Hot Mix Plant No. 2), C.P.W.D. I.P. Estate, New Delhi - 110 002.	11.7.96	- Claiming that Hot Mix Plants are not categorised under "H" Group in Master Plan 2001. - Claiming Hot Mix Plant as service industry and asking for being allowed in Delhi. - Claiming to have installed air pollution control devices. - Analysis report enclosed indicates emission of particulate matter (679 mg/NM^3) and stack with reference to ground level is 21 metre.

02.	H.M.P. (Hot Mix Plant), C.P.W.D. Majnu Ka Tila, Timarpur, Delhi - 110002.	11.4.96	- Claiming Hot Mix Plant as service industry and asking for being allowed in Delhi. - Claiming that Hot Mix Plants are not categorised under "H" Group in Master Plan 2001. - Claim to have installed air pollution control devices for meeting the emission limits - Analysis report enclosed indicates emission of particulate matter (829 mg/Nm^3) and stack height with reference to ground level is 21 metre."

3. It is obvious from the analysis report that the emission of particulate matters in respect of these Hot Mix Plants is 679 mg and 829 mg respectively. The permissible limit under the Environment Protection Rules is 150 mg. The Hot Mix Plants having been categorised as hazardous industries (Ha) under the Master Plan 2001, have to be relocated. For the reasons given by this Court in Interlocatory Application No. 22 in Writ Petition (C) No. 4677 of 1985 - *M.C. Mehta vs Union of India and Ors.* decided on July 8, 1996, we hold that the following 43 Hot Mix Plants, being 'H' category industries, cannot operate in the city of Delhi:

(List not attached)

4. We, therefore, hold and direct as under:-

(1) The above listed 43 Hot Mix Plants cannot be permitted to operate and function in the Delhi. These Hot Mix Plants may relocate/shift themselves to any other industrial estate in the NCR. We direct that the 43 Hot Mix Plants listed above shall stop functioning and operating in the city of Delhi with effect from February 28, 1997. These Hot Mix Plants shall close down and stop functioning in Delhi with effect from the said date.

(2) The concerned Deputy Commissioner of Police shall, as directed by us, effect the closure of the above Hot Mix Plants with effect from February 28, 1997 and file compliance report in this Court within 15 days thereafter.

(3) The National Capital Region Planning Board shall render all assistance to the Hot Mix Plants in the process of relocation. This direction shall go to the Board through its secretary. The National Capital Territory, Delhi Administration, through its Chief Secretary and Secretary, Industries, State of Haryana through its Chief Secretary and Secretary, Industries, State of Rajasthan through its Chief Secretary and Secretary, Industries and the State of Uttar Pradesh through its Chief Secretary and Secretary, Industries shall provide all assistance, help and necessary facilities to the Hot Mix Plants which intend to relocate themselves in the industrial estates situated in their respective territories.

(4) The allotment of plots, construction of factory, buildings, etc. and issuance of any licences/permissions etc. shall be expedited and granted on priority basis.

(5) In order to facilitate shifting of Hot Mix Plants from Delhi, all the four States constituting the NCR shall set up unified single agency consisting of all the participating States to act as a nodal agency to sort out all the problems of such Hot Mix Plants. The single window facility shall be set up by the four States within one month from today. This direction to the four States is through the Chief Secretaries of the concerned States. The Registry shall convey this direction separately to the Chief Secretaries along with a copy of this judgment. We make it clear that no further time shall be allowed to set up the single window facility.

(6) The use of the land which would become available on account of shifting/relocation of the Hot Mix Plants shall be permitted in terms of the orders of this Court dated May 10, 1996 in I.A. No. 22 in writ petition (C) 4677/85.

(7) The shifting Hot Mix Plants on their relocation in the new industrial estates shall be given incentives in terms of the provisions of the Master Plan and also the incentives which are normally extended to new Hot Mix Plants in new industrial estates.

(8) The closure order with effect from February 28, 1997 shall be unconditional. Even if the re-location of Hot Mix Plants is not complete they shall stop functioning in Delhi with effect from February 28, 1997.

(9) The workmen employed in the above mentioned 43 Hot Mix Plants shall be entitled to the rights and benefits as indicated hereunder:-

(a) The workmen shall have continuity of employment at the new town and place where the Hot Mix Plant is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the Hot Mix Plants in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the Hot Mix Plant shall be given one years wages as "shifting bonus" to help them settle at the new location;

(d) The workmen employed in the Hot Mix Plants which fail to relocate and the workmen who are not willing to shift along with the relocated Hot Mix Plants, shall be deemed to have been retrenched with effect from February 28, 1997 provided they have been in continuous service (as defined in Section 25B of the Industrial Disputes Act, 1947) for not less than one year in the Hot Mix Plants concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one years wages as additional compensation;

(e) The "shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management before March 31, 1997.

(f) The gratuity amount payable to any workmen shall be paid in addition.

SCALE (PIL) 1981-97 987

DELHI DEVELOPMENT AUTHORITY *Petitioner*

VS

SKIPPER CONSTRUCTION CO. & ANR. *Respondents*

CORAM: B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.

Order dated February 11, 1997 in Interlocutory Application Nos. 16, 23, 24, 25, 27, 29, 30, 31, 32, 38-49, 15, 32A, 33, 34, 50, 5-54 in S.L.P. (C) No. 21000 of 1993. [1997(2) SCALE 9]

PUBLIC INTEREST LITIGATION — CORRUPTION — ADVANCEMENT OF LOANS/ BANK GUARANTEES TO M/S SKIPPER CONSTRUCTION PVT. LTD. — Whether and to what extent directors of the New Bank of India and the former chairman of Canara Bank are guilty of deliberate and/or intentional misuse/abuse of their power in extending bank guarantees to and on behalf of Skipper group of companies and what loss, if any, have they caused to the bank on that account — Court also issued notices to Sri R.R. Pradhan, Dr. M.R. Kotdawala, Sri J.P. Awasthi who were nominees of Reserve Bank of India on the board of Canara Bank during the period April 24, 1984 to November 10, 1988 as their responsibility in the matter has also to be determined — Court further issued notice to Sri D. Seetharamma who was the workman Director on the board of Canara Bank — Court requested Governor of the Reserve Bank of India to nominate two officers of the status of Deputy Governors of the Reserve Bank of India to act as an Enquiry Committee. The responses/ explanations filed by the several parties in this court, pursuant to the notices issued by this court, shall be forwarded to the Reserve Bank of India and shall form part of the record before the Enquiry Committee.

1. This order is in continuation of the order dated January 31, 1997 and the order dated February 7, 1997.

2. Pursuant to the notice given to Sri R.C. Suneja [formerly Chairman and Managing Director of the New Bank of India, he has filed a detailed counter setting out several defences. He has also filed a list of all the movable and immovable properties held by him, his wife and his children. The Canara Bank has filed an elaborate response in the matter. The Punjab National Bank, into which the New Bank of India has been merged, has also offered to file their response.

3. The other directors of New Bank of India, to whom notices were directed, viz., Ms. Tajwar Rehman Sawhney, Sri Sudershan Lal, Sri S.S. Ranade and Sri J.K. Sawhney have filed their explanations.

4. On the basis of information furnished by the learned counsel for the Canara Bank, with respect to the legal representatives of Late Sri B.R. Ratnakar [formerly Chairman and Managing Director of the Canara Bank] notices have been issued to his legal representatives in India.

5. Sri Harish Salve, learned counsel appearing for the Reserve Bank of India, stated that during the course of the day [7th February, 1997], the response of the Reserve Bank of India will be filed.

6. *The question before us is* whether, and to what extent, Sri R.C. Ranade and Sri J.K. Sawhney are guilty of deliberate and/or intentional misuse/abuse of their power in the matter of the New Bank of India extending bank guarantees to and on behalf of Skipper group of companies *and* what loss, if any, have they caused to the bank on that account. Upon the answer to the said question will depend the liability of one or the other of the said persons to make good the loss caused to the bank. Any action against them shall also depend upon such answer.

7. Similarly, the question in the case of Sri B.R. Ratnakar is whether, and to what extent, he is guilty of deliberate and/or intentional misuse/abuse of his power in the matter of New Bank of India extending bank guarantees to and on behalf of Skipper group of companies and what loss, if any, has he caused to the bank on that account. Upon the answer to the said question will depend the liability of the legal representatives of said person to make good the loss caused to the bank.

8. We may also mention that Sri R.R. Pradhan, Dr. M.R. Kotdawala, Sri J.P. Awasthi were nominees of Reserve Bank of India on the board of Canara Bank during the period April 24, 1984 to November 10, 1988. Their responsibility in the matter has also to be determined. Sri D. Seetharamma was the workman Director on the board of this bank from August 1, 1981 to August 17, 1987. Notices to these persons shall also issue calling upon them to show-cause why appropriate action should not be taken against them in the light of conclusion (e) recorded by Justice Saharya Commission [at Page 128 of the Report].

9. Having regard to the nature of the question involved herein, and also because the Reserve Bank of India is the authority to regulate and monitor the activities of the Banks in the country, we think it appropriate that the aforesaid questions shall be enquired into by the Reserve Bank of India. For this purpose, we request the Governor of the Reserve Bank of India to nominate two officers of the status of Deputy Governors of the Reserve Bank of India to act as an Enquiry Committee. The responses/explanations filed by the several parties in this court, pursuant to the notices issued by this court, shall be forwarded to the Reserve Bank of India and shall form part of the record before the Enquiry Committee. Two copies of the Justice Saharya Commission Report shall also form part of the record before the said Enquiry Committee. The said Report of the Commission shall be treated as a relevant piece of evidence but not as conclusive evidence against the persons concerned. In other words, while the Enquiry Committee shall be entitled to take into consideration the material, oral and documentary, gathered by the said Commission and its Report, it shall not treat the same as final and/or binding. It shall be open to the persons concerned to show that the said findings are not correct and/or tenable, in fact or law, and that the evidence gathered is not relevant against them. The Enquiry Committee shall give notices to both the banks, viz., Punjab National Bank [into which the New Bank of India has since merged] and the Canara Bank, to the persons aforementioned and to all such other persons who, in the opinion of the Enquiry Committee, are responsible for any irregularities in the matter and send a report to this court determining the responsibility and the extent of responsibility, if any, of each of the above persons. Those persons, to whom notices are given by this Court but have not already filed their response/explanation in this Court as well as those to whom notices may be given by the Enquiry Committee aforesaid, shall be entitled to submit their response/explanations before the Reserve Bank of India/Enquiry Committee. The persons who have already appeared in this Court shall appear before the Committee, at Delhi, on February 20, 1997 in the premises of the RBI. No notices be sent to them by the Enquiry Committee. The Enquiry Committee shall meet on that day and commence the work.

10. All the properties standing in the name of Sri R.C. Suneja, his wife and children as per the list filed by him shall be subject to the orders dated January 31, 1997.

11. The Reserve Bank of India [the Enquiry Committee aforesaid] shall submit their Report in the matter to this Court as expeditiously as possible, not later than three months. As and when the Report is received, the same shall be placed before this court for appropriate orders.

12. A copy of this order shall be communicated to the Governor, Reserve Bank of India by name today itself. The Governor, Reserve Bank of India is requested to take appropriate steps in pursuance of this order.

SCALE (PIL) 1981-97 990
MUKESH RASIKLAL PATEL *Petitioner*
VS
U.O.I. & ORS. *Respondents*
CORAM: B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — GOVERNMENT ACCOMMODATION — Court takes notice of the allegation of the petitioner that respondent No.3 has ceased to be a Member of Parliament and yet continues to occupy the Government accommodation which was allotted to him while he was MP — Court issues Notice.

1. We have seen the order of allotment in favour of the petitioner which is dated 11.12.96. We also take notice of the allegation of the petitioner that respondent No.3 has ceased to be a Member of Parliament and yet continues to occupy the Government accommodation which was allotted to him while he was MP. Mr. Salve submits that this developing tendency of holders of public offices not to vacate the Government accommodation after they cease to be entitled to occupy the same must be checked. We are inclined to agree that this prevalent counter-culture, which cannot be justified from any standpoint, ought to be curbed by all concerned.

2. Issue notice.

Order dated February 24, 1997 in W.P. (C) No. 72/97 [1997 (2) SCALE 390]

SCALE (PIL) 1981-97 990
MS. KAMINI JAISWAL, ADVOCATE *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: A.M. AHMADI CJI, SUJATA V. MANOHAR AND K.T. THOMAS, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — The petitioner contends that the high pressure gas pipelines laid by GAIL and/or ONGC are unsafe in certain specified places and are potentially hazardous — The petitioner has prayed that these pipelines should be closed until an independent enquiry by experts certifies and declares that these pipelines are safe for further operation — The petition was filed pursuant to gas leakage from a high pressure gas pipeline of GAIL at Dhaula Kuan in Delhi on or about 8th of July, 1993 — Disposing the appeal, Court was satisfied that no further action is now required to be taken by this Court.

Mrs. Sujata V. Manohar, J.— The petitioner is a practising advocate. She has filed the present petition as a public interest petition under Article 32 of the Constitution of India. The respondents are the Gas Authority of India Ltd. (hereinafter referred to as 'GAIL'), the Oil and Natural Gas Corporation Ltd. (hereinafter referred to as 'ONGC'), the Central Pollution Control Board and the Union of India.

2. The petitioner contends that the high pressure gas pipelines laid by GAIL and/or

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Judgment dated March 4, 1997 in W.P. (C) No. 714 of 1994. [1997(2) SCALE 438]

ONGC are unsafe in certain specified places and are potentially hazardous. The petitioner has prayed that these pipelines should be closed until an independent enquiry by experts certifies and declares that these pipelines are safe for further operation. The petition was filed pursuant to gas leakage from a high pressure gas pipeline of GAIL at Dhaula Kuan in Delhi on or about 8th of July, 1993.

3. GAIL was formed in the year 1984 for the purpose of handling natural gas related activities. Originally ONGC had planned the HBJ pipeline which was to run from Hazira to Babrala and Jagidshpur for supply of gas to the fertilizer and power plants enroute. This pipeline was taken over by GAIL from ONGC in the conceptualisation stage itself. Subsequently, GAIL added additional pipelines and spurlines to the HBJ pipeline. ONGC had also laid around 680 kms. of pipelines in various locations of the country such as the Gujarat region, Assam region, Bombay region, K.G. basin, Cauvery basin etc. All these pipelines were transferred to GAIL, a health check of all these lines was carried out when it took over these pipelines. After the check, necessary corrective action which included replacement of some of the pipelines was also taken by GAIL both from the safety point of view as well as operational point of view. As of now, GAIL operates a total of 2974.856 kms. of pipelines.

4. The petitioner has contended that the pipelines have not been laid as per applicable international standards ANSI/ASME B 31.8 of 82. The specific averments in the petition relate to the DESU-Maruti Spurline laid by GAIL which admeasures about 35 kms. According to the petitioner, the terms and conditions on which GAIL had given the contract for laying this pipeline have not been complied with. She contends that gas leakage detection and automatic shutting down system has not been provided. Telesupervisory system is not provided. Gas pipeline was required to be buried at least 1.5 meters below the ground. But the gas pipeline has not been so laid. The gas pipeline was required to be laid keeping adequate distance from human settlements but this has also not been done and lastly she contends that GAIL has not obtained clearance from the Department of Explosives. She has alleged lack of experience, lack of supervision or control by GAIL officials and mismanagement by GAIL so that the contractors have used sub-standard material and bad workmanship in laying the pipeline in violation of the safety guidelines. This resulted in gas leakage from this pipeline at Dhaula Kuan on 8th July, 1993.

5. GAIL has filed a detailed affidavit in reply to these allegations. It has laid before us three reports of experts in connection with the laying of the DESU-Maruti Spurline as also in connection with the safety of its pipeline system. GAIL has also furnished to us detailed technical material in connection with the allegations made by the petitioner.

6. GAIL has submitted that it had decided to lay the DESU-Maruti Spurline which is a short line by using their in-house experience. They had given a contract for the laying of this pipeline stipulating all the necessary conditions ensuring safety of the system. The contractor, however, defaulted in many ways while laying this pipeline. Ultimately GAIL was compelled to terminate his contract. There is an arbitration pending between GAIL and the contractor in connection with the defective workmanship and the termination of the contract. GAIL contends that it was this defective workmanship which led to the gas leakage at Dhaula Kuan. In connection with this accident GAIL set up a committee consisting of the Additional Director, Oil Industry Safety Directorate and two GAIL officers not connected with the project to report on the investigation of the failure of the DESU-Maruti pipeline at Dhaula Kuan.

This report was placed before us. The committee has reported that (a) the area near Dhaula Kuan being rocky normal mode of trenching using explosives was not possible due to close proximity to traffic/habitations. Hence manual rock cutting had to be done. Consequently, against the tender specifications of 1.5. meter soil cover, about 1.0 meter cover could be achieved. (b) The space constraints with dense traffic near Dhaula Kuan restricted the use of conventional pipe lowering machinery for extended hours. (c) Necessary and sufficient details of existing utilities like underground cables, pipes were not available from civic authorities. (d) On excavation of the leakage affected area, it was observed that the bottom of the pipeline was found to be resting on a cable. (e) Inspection of buried pipeline route revealed soil settlement at various locations near Dhaula Kuan Park Area after heavy rains. This caused accumulation of stagnant water in some areas. One of the factors noted by the committee was that none of the persons associated with supervision of the job were aware about the existence of a cable underneath the pipe. Hence the HDPE Sheet which is normally placed between the pipeline and the cable had not been placed.

7. We need not examine at length the various facts found by the committee as leading to that accident. What is more important, GAIL set up an internal committee to pin-point the lapses and to suggest corrective measures. This committee's report is also produced before us. The committee noted that the specifications in the tender were very clear, exhaustive and adequate to take care of the safety aspects. However, some of the specifications as set out in the report were not taken care of by the contractor. It noted that some of the construction activities may not have been inspected by GAIL personnel or the inspection report may not represent the real status of the activity. The committee has commented upon trenching work and the fact that the cover of the pipe was at some places even less than 1.0 meter although the tender specification was 1.5. meters. This may be on account of the rocky soil and the prohibition on the use of explosives on account of the vicinity of the area to habitation. It commented on the defects in the inspection reports. It was also pointed out that thickness of the compacted padding on top of pipe corrosion coating should have been at least 150 MM. Padding material should have been graded soil/sand and/or other materials containing no gravel, rock or lumps of hard soil. Such padding material has not been observed at various points during the inspection. The report is a very detailed report setting out other defects also. It has made various suggestions; some of the suggestions being that (1) GAIL should deploy third party - Inspecting Agency for such activities of pipe laying; (2) That GAIL should supervise and monitor the activities of the third party inspecting agency and the activities of the contractor in respect of the compliance of tender specification; (3) That no deviation should be permitted by Engineer Incharge; (4) Necessary formats should be developed to ensure total conformity to the specification requirements; (5) GAIL Engineers and Supervisors should be given training programmes and (6) GAIL should have own quality audit cell for overviewing the quality compliance in totality.

8. GAIL also carried out a post-construction integrity survey through Sofregaz, an international agency known for its expertise in this area. Sofregaz was asked to carry out investigation and report whether safe engineering practices have been followed during construction of the existing underground pipelines; (2) to ascertain whether the pipeline has been laid as per standard construction specification/codes and to review the QA/QC procedures, namely, welding procedure specifications, material specifications, coating and cathodic protection and to recommend modifications/ improvements wherever required. It was also required to carry out other detailed examinations as set out in its terms of reference. It was also, inter alia, asked to identify potential possible hazardous situations and measures to control quickly any leak/burst etc. It was required to report on the status of pipeline, critical areas, preventive measures, disaster management plan, remedies and recommendations. Sofregaz report sets out that on its general assessment there was no apparent alarming deficiency in the pipelines with respect to safe operation and safety of life and property. GAIL should, however, take action to attend to the points listed in the minutes of the discussions for further improvement of long term safety of the pipelines. It also said that based on the survey of the depth of cover over the pipelines to the extent observed, it considers it to be well within the acceptable limit with reference to the standard followed by GAZ DE FRANCE in normal condition of operation. As such it was not necessary to undertake further lowering of the pipeline from the present state of cover to the extent observed. The detailed point-by-point action plan of Sofregaz and the action consequently taken by GAIL in connection with each of the recommendations has been set out in detail as Annexure 2 to the report of Sofregaz. GAIL has pointed out that the expert report of Sofregaz is the outcome of a post-construction integrity survey for pipelines in and around Delhi. A technical survey by an independent agency was considered necessary in view of the fact that the Delhi pipeline network was the first urban and sub-urban gas distribution system executed by GAIL. A decision to have such a survey through international competitive bidding by an experienced international company was taken on 22.6.1993 even prior to the occurrence of the gas leak at Dhaula Kuan. The cost of such technical audit is part of the approved cost of the project itself.

9. A detailed status report has also been submitted dealing with diverse aspects of maintenance of the pipeline network in the country. It deals with the health check of the pipelines taken over from ONGC and the operation and maintenance control of the entire pipeline system in the country. The streamlining of procedures achieved over a period has led to GAIL obtaining certification by International Organisation for Standardization (ISO 9002) and conferment of the Oil Industry Safety Award to GAIL for the year 1992-93. GAIL has also pointed out that high pressure gas pipelines owned and operated by it across the country are laid as per international standards and in fact GAIL has prescribed even more stringent standards than the international code ANSI 31.8. It has annexed a comparative table in which, inter alia, the minimum cover of a pipe under ANSI is 75 cms. while GAIL has prescribed 75 cms. to 1.5. meters. GAIL has also taken the following important decisions to streamline the procedure in the matter of execution of works:

(i) To have a 3-layer polythene coating which has a higher resistance to handling damage;

(ii) To execute the work with an overall consultancy by third party agency with backup consultant;

(iii) To have inspection both during procurement as well as construction by third party agencies along with the check inspecting agency in addition to an audit group of GAIL consisting of persons from a project other than the particular projects being audited; and

(iv) To provide all future pipeline systems with optical fibre cable links to the various nodal points to ensure safe communication.

10. Looking to the detailed information furnished by GAIL and the measures taken by it as set out in the material which is disclosed by GAIL, we do not think any further action is now required to be taken by this Court. GAIL has been at pains to allay the apprehensions expressed by the petitioner. Looking to the material on record, we do not think that any further directions are required. The petition is accordingly disposed of. There will be no order as to costs.

SCALE (PIL) 1981-97 994

ANIMAL AND ENVIRONMENT LEGAL DEFENCE FUND *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI CJI, SUJATA V. MANOHAR AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — WILD LIFE (PROTECTION) ACT, 1972 — INDIAN FOREST ACT, 1947 — SECTION 26(1)(i) — In 1983 Government of Madhya Pradesh under Section 35(1) declared its intention to constitute an area as the Pench National Park — Though proceedings under the Act for adjudicating claims were carried out, no notification under Section 35(4) was issued by the Government of Madhya Pradesh declaring the area to be a National Park — Government of Madhya Pradesh granted 305 fishing permits to the tribals who had been displayed as a result of the proceedings to declare Pench as a National Park — Writ Petition in the public interest challenging the grant of the fishing permits — Whether the grant of permits which are issued in lieu of the tribal's traditional right of fishing are unwarranted and must be cancelled — Disposing of the petition, Held,

A. The petitioner is undoubtedly justified in expressing his apprehensions and in pointing out the dangers of permitting 305 licensees to fish in the Totladoh reservoir. The fishing permits, however, have been granted to the tribals in lieu of their traditional fishing rights. Although the petitioner relies upon the provisions of the Indian Forests Act in support of the contention that the tribals cannot have any rights in a Reserved Forest which has subsequently become a National Park, the Collector of Chhindwara, in his report has pointed out that in fact there were four villages of tribals in the Chhindwara District falling within the Reserved Forest-cum-National Park area where these tribals resided and fishing was their main source of livelihood. (Para 10).

B. Under Section 33(e) of the Wild Life (Protection) Act as it stood prior to its amendment in 1991, the Chief Wildlife Warden had the power to "regulate, control or prohibit, any fishing". This provision is deleted by the amendment made in Section 33 in 1991. The permits granted in the present case, however, are in lieu of traditional fishing rights of the tribals. And these permits are issued in settlement of these rights prior to the final notification under Section 35(4) notifying the area as a National Park. Hence these do not fall under Section 33. (Para 10).

C. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration.

Judgment dated March 5, 1997 in W.P. (C) No. 785 of 1996 [1997(2) SCALE 493]

Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation. (Para 11).

D. Since all the claims in respect of the National Park area in the State of Madhya Pradesh as notified under Section 35(1) have been taken care of, it is necessary that a final notification under Section 35(4) is issued by the State Government as expeditiously as possible. The State Government is, therefore, expected to act with a sense of urgency in matters enjoined by Article 48A of the Constitution keeping in mind the duty enshrined in Article 51A(g). Court direct that the State Government of the State of Madhya Pradesh shall expeditiously issue the final notification under Section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh. (Para 15).

Referred: Pradeep Krishen vs Union of India & Ors [AIR 1996 SC 2040 = 1996(4) SCALE 566].

Mrs. Sujata V. Manohar, J.— The petitioner is an association of lawyers and other persons who are concerned with protection of the environment. They have filed the present petition in public interest challenging the order of the Chief Wildlife Warden, Forest Department, Government of Madhya Pradesh (second respondent) granting 305 fishing permits to the tribals formerly residing within the Pench National Park for fishing in the Totladoh reservoir situated in the heart of the Pench National Park Tiger Reserve.

2. The Pench National Park covers an area falling in the States of Madhya Pradesh and Maharashtra. The area which falls in the State of Madhya Pradesh covers two districts, Seoni and Chhindwara. The districts of Seoni and Chhindwara were originally parts of the old C.P. and Berar Province. This area was originally declared as a Reserved Forest under the Indian forest Act of 1878. It continued to remain as a Reserved Forest under the Indian Forest Act of 1927. Under Section 5 of the Indian Forest Act of 1927, once a notification is issued declaring any land as a reserved forest no right shall be acquired in or over such land, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued. Under Section 26(1)(i) of the Indian Forest Act, 1927, any person who in contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or shares, shall be punishable in the manner provided in that section. According to the petitioner, in view of these provisions, the ancestors of the present tribals could not have acquired any fishing right in the Pench River. The present permits which are issued in lieu of this traditional right, therefore, are unwarranted and must be cancelled or set aside.

3. On the promulgation of the Constitution, the right to safeguard forests and wild life has received constitutional sanction. Under Article 48A of the Constitution, the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Under Article 51A(g), it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life. In furtherance of these objectives, the Wild Life (Protection) Act, 1972 was promulgated. It provides, inter alia, for declaration of sanctuaries, national parks, game reserves and closed areas. Under Section 35 of the Wild Life (Protection) Act, 1972, whenever it appears to the State Government that an area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park. Under sub-section (3) of Section 35 where any area is intended to be declared as a National Park, the provisions of Sections 19 to 26 shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of rights, in relation to any land in such area as they apply to the said matters in relation to any land in a santuary. Under sub-section (4), when the period for preferring claims has elapsed, and all claims, if any, have been disposed of by the State Government and all rights in respect of lands proposed to be included in the National Park have become vested in the State Government, the State Government shall publish a notification specifying the limits of the area which shall be comprised within the National Park and declare that the said area shall be a National Park on and from such date as may be specified in the notification.

4. Accordingly, by Notification No. 5/15/82-10/77 dated 1.3.1983 the Government of Madhya Pradesh Forest Department declared its intention under Section 35(1) of the Wild Life (Protection) Act, 1972, to constitute the areas specified therein as a National Park. The area of Pench National Park so notified was within the two districts of Seoni and Chhindwara. On such declaration, the Collector of the concerned district is required under Section 19 cf the Wild Life (Protection) Act, 1972 to enquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary.

5. Under Section 21, the Collector is required to publish in every town and village or in the neighbourhood of the area concerned, a proclamation specifying the situation and the limits of the National Park and requiring any person, claiming any right mentioned in Section 19, to prefer before the Collector, within two months a written claim in the prescribed form specifying the nature and extent of such right with necessary details and the amount and particulars of compensation, if any, claimed in respect thereof.

6. Under Section 22 the Collector is required to hold an enquiry in the manner specified there. Accordingly on 10.12.1985, the Collector, Seoni issued a proclamation under Sections 19 and 21 inviting claims within 60 days in respect of the areas notified under Section 35(1) by the notification of 1.3.1983. Apparently no one lodged any claim. The Collector issued a final order under Section 24 of the Wild Life (Protection) Act, on 28.8.1986.

7. The Collector, Chhindwara similarly issued a proclamation under Sections 19 and 21 inviting claims. As no claims were received, a final order under Section 24 was issued by the Collector, Chhindwara on 27.12.1986. However, no notification under Section 35(4) has yet been issued by the Government of Madhya Pradesh declaring the said area as a National Park.

8. As per the counter-affidavit filed on behalf of the second respondent it has been stated that although the necessary proclamations were issued earlier nobody came forward to claim their rights on account of illiteracy and unwareness. However, recently three applications regarding claims had been received pertaining to the traditional rights of villagers residing in 8 villages within the notified area which have now been relocated outside the National Park area.

These villagers are tribals. The villagers claim that they had a traditional right of fishing for their livelihood in the Pench river. They have claimed that their traditional right of fishing should be preserved as this is their only source of livelihood. Most of these tribals have been displaced from their original villages and have been resettled in villages outside the National Park area. Under an order dated 30.5.1996 these tribals have now been given permits to fish in the Totladoh reservoir which came into existence in 1986-87 on construction of a dam across the Pench river as a part of the Pench Hydro Electric Project. The reservoir is in the centre of the National Park area which partly falls in Maharashtra and partly in Madhya Pradesh. Apparently, fishing activity has been started in this reservoir by the Fisheries Development Corporation of the State of Madhya Pradesh despite protests from the forest department.

9. The petitioner as well as the State of Maharashtra have pointed out that if fishing is permitted in the heart of the National Park and as many as 305 fishing permits are issued, the bio-diversity and ecology of the area will be seriously affected. Fishing activity is a potential source of danger to the National Park because it may also lead to illegal felling of trees or poaching. It will be humanly impossible to monitor 305 licensees, their ingress and egress and to ensure that these licensees do not indulge in poaching and other ecologically harmful activities. It is also pointed out that in the Totladoh reservoir there are other wild life varieties such as crocodiles and turtles. There are also a wide range of local fishes. All these may face extinction. The water birds as well as migratory birds that use dead or dying trees and small islands in the reservoir as their roosting and nesting sites will also be disturbed. The fishermen uproot such dead and dying trees to clear the path for movement of their boats. Their activity along the peripheral shallow areas also prevents vegetation along the coast line. The fishermen may light fires for cooking and other purposes or may throw garbage and polythene bags which may also prove damaging to the ecology of the area. There is also a danger of large scale poaching of wild animals. The National Park is also a tiger reserve and all these other activities have a direct bearing on the protection of wild life in the National Park area.

10. The petitioner is undoubtedly justified in expressing his apprehensions and in pointing out the dangers of permitting 305 licensees to fish in the Totladoh reservoir. The fishing permits, however, have been granted to the tribals in lieu of their traditional fishing rights. Although the petitioner relies upon the provisions of the Indian forests Act in support of the contention that the tribals cannot have any rights in a Reserved Forest which has subsequently become a National Park, the Collector of Chhindwara, in his report has pointed out that in fact there were four villages of tribals in the Chhindwara District falling within the Reserved Forest-cum-National Park area where these tribals resided and fishing was their main source of livelihood. Thus the Collector of Chhindwara in his letter of 7th of June, 1996 addressed to the Secretary, Government of Madhya Pradesh, Forest Department, in connection with the issuing of a final notification for the establishment of Pench National Park has stated that displaced persons from 4 villages namely, Palaspani, Umarighat, Chhindewani and Chhedia have traditional fishing rights in Pench river. After displacement these persons have not been rehabilitated systematically. No agricultural land has been made available to them, no work has been made available to them and they do not have any means of livelihood except catching fish which is their traditional occupation. If they are not given fishing permission a serious problem of feeding and supporting their families will arise. He has, therefore, recommended recognition of traditional rights of 332 families of 4 villages. In view of these reports the State Government has stated on affidavit that it was satisfied that the traditional rights of fishermen had not been settled and instructions were given to the Chief Wildlife Warden for issuing permission for fishing to 305 local fishermen whose names are set out in the annexure to the affidavit of respondent No.2 Under Section 33(e) of the Wild Life (Protection) Act as it stood prior to its amendment in 1991, the Chief Wildlife Warden had the power to "regulate, control or prohibit, any fishing". This provision is deleted by the amendment made in Section 33 in 1991. The permits granted in the present case, however, are in lieu of traditional fishing rights of the tribals. And these permits are issued in settlement of these rights prior to the final notification under Section 35(4) notifying the area as a National Park. Hence these do not fall under Section 33.

11. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation. Totladoh dam where fishing is permitted is in the heart of the National Park area. There are other parts of the reservoir which extend to the borders of the National Park. We are not in a position to say whether these outlying parts of the reservoir are accessible or whether they are suitable for fishing, in the absence of any material being placed before us by the State of Madhya Pradesh or by the petitioner. Some attempts, however, seem to have been made by the State of Madhya Pradesh to contain the damage by imposing conditions on these fishing permits. The permissions which have been given are subject to the following conditions:-

(1) The identified families will be given photo identity cards only on the basis of which fishing and transport will be permitted;
(2) During the rainy season (months: July to October) fishing will be totally banned;
(3) During the rest of the year, entry will be permitted in the water from 12 p.m. to 4 p.m. and transport of fish will be allowed before sunset;
(4) The photo identity card holders will not be allowed to enter the National Park or the Islands in the reservoir nor will they be allowed to make night halts;
(5) Transport of fish will be allowed only on totladoh-Thuepani Road from Totladoh reservoir.

12. Despite these conditions the petitioner as well as the State of Maharashtra have opposed these fishing permits being granted. They have rightly pointed out the difficulties in monitoring the fishing activity of all these permit holders.

13. We, therefore, find it necessary to clear some doubts and give some additional directions for properly implementing the licence conditions. We direct that :

(1) Only the persons named in Annexure R-XVI to the affidavit of respondent No.2 shall be given individual permits for fishing in Totladoh reservoir. Each permit holder will have a photo identity card with his photograph on it. This will be a personal right given to the identity card holder and the permit granted to him shall not be transferable. The permit will also bear the photograph of the permit holder.
(2) The permit holder will be entitled to enter

the National Park area only at Thuepani and shall be entitled to travel through the National Park only on the Highway joining Thuepani to Totladoh. He will not have any right to enter or travel in the National Park area except along the said highway in order to have access to the Totladoh reservoir.

(3) The wildlife Warden and/or any other authority nominated by the Madhya Pradesh Government shall demarcate the area of the reservoir over which these permit holders are allowed to fish.

(4) It shall be made clear that the permit holders shall not be entitled to have any access to the islands in the reservoir.

(5) The State of Madhya Pradesh shall maintain check posts along the route of these fishermen to ensure that the fishermen do not transgress into any other part of the National Park.

(6) A daily record of the entry and exist of each permit holder and the quantity of fish carried by him out of the National Park shall be maintained.

(7) The fishermen will be prohibited from lighting fires for cooking or for any other purpose along the banks of the reservoir nor shall they throw any litter along the banks of the reservoir or in the water.

(8) The Madhya Pradesh State Government shall sanction an adequate number of personnel as also vehicles and boats for the purpose of monitoring the activities of these 305 permit holders. A monitoring squad shall be posted not merely at the entrance to the National Forest area but also along he route or in other areas of the National Forest as may be required to ensure that there is no poaching or other undesirable activity by the permit holders.

14. The intervenor organisation which has intervened in this petition, namely, Jan Van Andolan Samiti, Totladohi shall explain to the concerned fishermen, the conditions, subject to which they are allowed to fish in the Totaldoh reservoir and shall impress upon these fishermen their obligation to carry on the fishing activity in a manner which does not damage the ecology of the National Park or disturb its environment.

15. Since all the claims in respect of the National Park area in the State of Madhya Pradesh as notified under Section 35(1) have been taken care of, it is necessary that a final notification under Section 35(4) is issued by the State Government as expeditiously as possible. In the case of *Pradeep Krishen v. Union of India & Ors.* (AIR 1996 SC 2040), this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of 1.3rd of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wild life in those areas. The State Government is, therefore, expected to act with a sense of urgency in matters enjoined by Article 48A of the Constitution keeping in mind the duty enshrined in Article 51A(g). We, therefore, direct that the State Government of the State of Madhya Pradesh shall expeditiously issue the final notification under Section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.

16. The petition is disposed of with these directions.

SCALE (PIL) 1981-97 1000

AKHIL BHARAT GOSEVA SANGH ETC. *Appellants*

VS

STATE OF ANDHRA PRADESH & ORS. *Respondents*

CORAM: B.P. JEEVAN REDDY AND SUHAS. C. SEN, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — ANDHRA PRADESH PROHIBITION OF COW SLAUGHTER AND ANIMAL PRESERVATION ACT, 1977 — Establishment and working of abattoir in Andhra Pradesh — Pursuant to order reported in 1994 (4) SCALE 721, Central Government submitted its report on the extent of pollution and cattle depletion as a result of the functioning of the abattoir — Appellants filed objections to the said report — In view of the fact that the report did not consider the impact of the functioning of the abattoir on cattle depletion after it was set up, Court directs the Central Government to send a fresh Report after studying the impact and effect of the working of Al-Kabeer upon the buffalo population of the Telengana region of Andhra Pradesh and also of the areas adjacent to Al-Kabeer, two years after the commencement of the operations by Al-Kabeer.

B.P. Jeevan Reddy, J.— This order may be read in continuation of our order dated October 25, 1994. By the order aforesaid, we had requested the Central Government to look into all relevant aspects as directed by the High Court of Andhra Pradesh in its judgment dated November 16, 1991 and to record its opinion with reasons. The said record was directed to be placed before this Court for consideration for passing of further orders.

2. The Central Government is said to have constituted an inter-ministerial committee headed by Sri C.K. Basu, Joint Secretary, Ministry of Food Processing Industries. The Committee comprised three other members, viz., Sri Shyam Lal, Director, Ministry of Environment and Forests, Sri N. Kondaiah, Joint Commissioner, Department of Animal Husbandry and Dairying, Ministry of Agriculture and Dr. G.S. Singh, Deputy Commissioner, Ministry of Food Processing Industries. The said Committee has submitted a Report, Paragraph 11 whereof states its conclusions in the following words:

"11. *Conclusions*

In the light of the foregoing discussions, the Committee is of the opinion that:

(i) with regard to the pollution of air and water the suggestions and recommendations made by the Krishnan Committee as well as the expert opinion contained in it are good and are acceptable. The Government of India in the Ministry of Environment and Forests have already accepted the same and the steps to implement have already been taken. The Environmental Audit Report along with the Environmental Management Firm Report along with the Environmental Management Plan prepared by the company are acceptable. However, regular monitoring of pollution of air and water need to be continued by the Company itself as well as periodic checking by the Andhra Pradesh State Pollution Control Board.

(ii) the Krishnan Committee's assumption and apprehensions on depletion of cattle due to establishment of M/s Al Kabeer's slaughter house are not based on correct scientific analysis and adequate reasoning, and therefore,

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Judgment dated March 12, 1997 in C.A. No. 3968 of 1994 with C.A. Nos. 3964-67 of 1994 with I.A. No. 5 [1997(2) SCALE 649] are not acceptable. From the facts and analysis in the foregoing paras it is obvious that amongst the bovine animals, the project of M/s Al Kabeer is to utilise only the unproductive buffaloes and not cow & its progeny. In fact, adequate number of unproductive buffaloes are and will be available for the use in this slaughter house and other slaughter houses in Andhra Pradesh.

(iii) the Krishnan Committee's suggestion of State Government taking over the M/s Al Kabeer slaughter house for supply of meat for domestic requirement goes contrary to the objective of giving permission for setting up of abattoir by M/s. Al Kabeer, as well as Government of India's programme for increase of export of meat and meat products. There is, however, need for modernising the existing abattoirs in the State for which the State Government may take appropriate steps separately.

(iv) the suggestion of Krishnan Committee of company undertaking effective programmes to raise feed cattle for meeting 50% requirement of the abattoir is not practicable and therefore, is not acceptable. However, as per the terms of license, the company should prepare a plan in consultation with the State Government and take up its implementation in conjunction with the State Government for promoting better animal husbandry practices."

3. The appellants have filed a number of objections to the said Report. We shall briefly deal with the main objections:

(i) In Paragraph 10.11 of the Report, reliance is placed upon 15th quinquennial live-stock Census 1993 prepared by the Directorate of Economic and Statistics, Government of Andhra Pradesh [Annexure VI to the Report]. [According to the learned counsel for the Central Government, the said Report reflects the position upto September-October, 1993.] According to the Report, the buffalo population has increased by 4.28 percent between 1987 and 1993. In other words, the buffalo population has risen from 87.57 lakhs to 91.32 lakhs. The increase is thus 0.7 percent per annum approximately. These figures are misleading because Al-Kabeer has commenced its operation only in April, 1993 and the requirement of Al-Kabeer is 1.8 lakhs buffaloes per annum. If the requirement of Al-Kabeer is taken into consideration, there will be a substantial depletion of buffalo population as a result of the working of Al-Kabeer.

(2) The aforesaid Census Report further shows that the population of male buffaloes of over three years has shown a decline of 29 percent between 1987 and 1993 though the female buffaloes has shown a rising trend of seven to twelve percent. The population of male buffaloes over three years has also shown a substantial decline ranging from twenty four percent to forty four percent. The only increase is in the buffaloes in milk. The above figures taken in conjunction with the annual intake of buffaloes of Al-Kabeer would establish that the working of Al-Kabeer would cause serious depletion of buffalo population in the Telengana region of Andhra Pradesh in particular and in the State of Andhra Pradesh and other adjoining areas in general. Besides, all the facts and figures which constitute the basis of the said Report are the facts and figures taken upto 1993. These do not and cannot represent the correct state of affairs because Al-Kabeer started functioning only in April, 1993. Only if one studies the facts and figures relating to 1994 and/or subsequent years, would he be able to assess the impact of the working of Al-Kabeer on the cattle wealth of the area concerned.

(3) The Report further shows that between April, 1993 and December, 1994, 29.3% of animals required by Al-Kabeer have

been procured from other States whereas 40.2% came from Telengana region, 12.3% from Rayalseema region and 7.13% from the coastal areas of Andhra Pradesh. At the same time, the Committee says that inasmuch as the buffalo population as a whole [which includes those in milk] has increased in Telengana region by eleven percent between 1987 and 1993, the apprehension of depletion of cattle wealth is not acceptable. Apart from certain inconsistencies in the Report, it is difficult to understand how the Census figures of the years 1987 to 1993 can constitute a valid basis for arriving at the conclusion that the substantial drawals of buffaloes from Telengana region from April, 1993 onwards would not have a negative effect upon the cattle wealth.

(4) The Central Government's Report is largely influenced by the letter of and the material furnished by Sri M. Yogi Reddy, Director of Animal Husbandry, Government of Andhra Pradesh dated November 29, 1994. The said Sri Yogi Reddy was retiring on the day after. He sent the said report in indecent haste even before he was asked to submit any Report by the inter-ministerial committee or by the Government of India, as the case may be. This aspect has been adversely commented upon by the Principal Secretary, Animal Husbandry and Fisheries Department, Government of Andhra Pradesh in his letter dated August 28, 1995 addressed to Dr. Krishna Ashrith, Director of Animal Husbandry, Andhra Pradesh, Hyderabad [successor to Sri Yogi Reddy]. The said letter states that "a special report was sent by your predecessor to the Government of India vide his Do. Lr. No. 25142/D6/94, dt. 29-11-1994 (just one day before his retirement) on a controversial issue like Al-Kabeer Export Ltd., without any reference to the Government even though the Directorate is well aware of the sensitive nature of the subject, in view of the Public agitation on the issue". The letter accordingly requested the Director, Animal Husbandry to check up the records "and fix up responsibility on the persons who are instrumental in sending such *unauthorised* reports to the Government of India directly without reference to the Government of Andhra Pradesh". A comparison of the contents of the enclosures to the Report sent by Sri Yogi Reddy and the Report submitted by the Central Government to this Court establishes that the Report of the Central Government draws heavily upon and is influenced to a large extent by the Report of and the material supplied by said Sri Yogi Reddy. Since the Report of Sri Yogi Reddy has been disowned by the Government of Andhra Pradesh as "unauthorised", the reliance upon the said Report has vitiated the Report of the Central Government.

(5) The Central Government Report has not taken into consideration the inherent contradiction lying at the heart of the issue. A perusal of the provisions of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 shows that slaughter of animals [which expression is defined to include buffaloes, both male and female and their calves] which are or are likely to become economical for the purpose of (a) breeding, or (b) drought or any kind of agricultural operations, or (c) giving milk or bearing off-spring, is prohibited. This is also the purport of the decisions of this Court on the subject. This means that only old and infirm buffaloes are available for slaughter *whereas* Al-Kabeer is said to be a most modern slaughter house and the beef obtained by it is meant exclusively for export. Can it be believed that Al-Kabeer would confine itself to old and infirm buffaloes. No one abroad would like to purchase or consume the meat of such old and infirm buffaloes. They would require fresh and healthy beef which can be obtained only from young and healthy buffaloes, whether male or female.

The failure to notice this inherent contradiction has vitiated the Central Government's Report. On the contrary, the Krishnan Committee Report has laid particular emphasis upon this aspect.

4. Sri Goswamy, learned counsel appearing for the Union of India, and Sri Gopal Subramanium, learned counsel for Al-Kabeer, disputed the correctness of the aforesaid objections and submitted that this project has been cleared and promoted as part of export promotion scheme of Government of India. Indeed, the Parliament has enacted Agricultural Processing Export Development Authority Act, 1986 [APEDA] with a view to promote the exports of agricultural products including beef and meat and that environmental and all other aspects have been fully taken into consideration before permitting the establishment of this unit.

5. So far as the Government of Andhra Pradesh is concerned, Sri Anil Kumar, learned counsel appearing for it, has specifically stated, on instructions received from the Government, that the Government of Andhra Pradesh stands by Krishnan Committee Report which means that it is opposed to the contents and conclusions recorded by the Report submitted by the Government of India. Rather curiously, in the written submissions of State of Andhra Pradesh and Andhra Pradesh Pollution Control Board filed in September 1994 [i.e., prior to our Order dated October 25, 1994], the Government of Andhra Pradesh had taken a different view. It had supported the establishment and working of Al-Kabeer fully.

6. We are of the considered opinion that there is good amount of substance in the submissions of the learned counsel for the appellants. The statistics which constitute the basis of this Report submitted by the Government of India are not really relevant to the issue before us. As rightly pointed out by the learned counsel for the appellants, Al-Kabeer started functioning only in April, 1993 and the effects and impact of its functioning will be known only if one studies the figures of availability and/or depletion of buffalo population over a period of one or two years *after* Al-Kabeer has started functioning. Merely showing that there has been a marginal increase in buffalo population between 1987 and 1993 is neither here nor there. Even if it is assumed that the 1993 figures refer to the figures upto September-October, 1993, that will take in only six months of working of Al-Kabeer. The proper impact of working of Al-Kabeer on the depletion of cattle, if any, would be known only if one takes into consideration the census figures of cattle in Telengana region or in the areas contiguous to Medak district [where the said unit is located], as the case may be, after atleast two years of working of Al-Kabeer. In short, the position obtaining after April, 1995 would alone give a correct picture. We cannot also reject the contention of the learned counsel for the appellants that the Government of India's Report is influenced to a considerable extent by the Report of Sri Yogi Reddy, the then Director of Animal Husbandry, Government of Andhra Pradesh, whose Report has been termed as "unauthorised" by the Special Secretary to the Government of Andhra Pradesh and thus disowned by the Government. Even according to the Government of India's Report, the requirement of Al-Kabeer is 1.5 to 2.0 lakhs buffaloes every year, which is not an insubstantial figure. We must also take into consideration what the appellants' counsel call the inherent contradiction between the standard and quality of beef required for export and the provisions of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 and the effect of the decisions of this Court, which leave only old and infirm buffaloes for slaughter. We, therefore, think it appropriate that the Government of India should be called upon to send a fresh Report after studying the impact and effect of the working of Al-Kabeer upon the buffalo population of the Telengana region of Andhra Pradesh and also of the areas adjacent to Al-Kabeer, two years after the commencement of the operations by Al-Kabeer. It is not possible for us to pass any final orders on the basis of the Report now submitted, which as stated above, is based upon the statistics/census figures of cattle population including buffalo population for the period 1987 to 1993. Accordingly, we call upon the Central Government to submit a fresh Report in the light of the observations made herein within six months.

7. Pending further orders and in the light of the material placed before us, we direct that with effect from April 1, 1997, Al-Kabeer shall function only at *half* the installed capacity and not at its full installed capacity. The Government of India, the State Government and the Andhra Pradesh Pollution Control Board shall ensure compliance with this direction.

8. List after six months.

SCALE (PIL) 1981-97 1004
DELHI DEVELOPMENT AUTHORITY *Petitioner*
VS
SKIPPER CONSTRUCTION AND ANR. *Respondents*
CORAM: B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — ADVANCEMENT OF LOANS/ BANK GUARANTEES TO M/S SKIPPER CONSTRUCTION PVT. LTD. — Update of order reported in 1997 (1) SCALE 532.

1. Mr. Sibal, learned counsel for the Canara Bank has placed before us the details of the legal representatives of late Sh. B.R. Ratnakar, the Chairman and Managing Director of the Canara Bank at the relevant time. They are:

1. Mr. Premanand R Shenoy,
   2C, HVS Paradise,
   9, Andree Road Cross,
   Shanthinagar
   Bangalore - 560 027
2. Smt. Prema Ratnakar,
   401/402, Garadi Apartments,
   K.R. Road,
   Tata Silk Farm,
   Bangalore - 560 004
3. Mr. Naveen R Shenoy,
   401/402, Garadi Apartments,
   K.R. Road,
   Tata Silk Farm,
   Bangalore - 560 004

2. It appears that another son - Mr. Rohit R Shenoy, is now studying in USA and his address is not available. Notice to him is dispensed with for the present.

3. Justice Saharya Commission has reported that "Mr. B.R. Ratnakar, Chairman-cum-Managing Director, Canara Bank, intentionally and with knowledge that sanction of the proposal was neither in consonance with the norms nor was it for the benefit and in the interest of the Bank, involved the bank in the transaction." The Commission has recorded a further finding that "it stands established that the two banks (New Bank of India and the Canara Bank)

Order dated February 7, 1997 in S.L.P. (C) No. 21000/93 [1997(2) SCALE (SP) 1] intentionally and with full knowledge sacrificed all norms, caution, care and prudence in granting the facility". Another finding recorded by the Commission is, "the other functionaries of the Canara Bank as named in Issue No. 2 directly and indirectly assisted the Company to get participation of Canara Bank in the un-profitable transaction and did not ensure fulfilment of the conditions contained in the guarantee."

4. The said findings recorded against Sh. B.R. Ratnakar call for appropriate action at the hands of this Court which shows that public funds, of which he was in the nature of a trustee, have been frittered away deliberately and intentionally. Accordingly, a notice shall issue to the aforesaid legal representatives of late Sh. B.R. Ratnakar to show cause why the loss caused by Sh. Ratnakar of Canara Bank in the region of Rs. 4 crores be not recovered from the properties - movable and immovable - in their possession. With a view to ensure that any orders passed in these proceedings are effective, we direct the said legal representatives of Sh. Ratnakar not to deal with or dispose of any assets or property held by them - movable and immovable, directly or indirectly. Any company of which any of them is a Director or in the management thereof (including M/s. Fair Growth Agencies, No. 3, St. Marks Road, Bangalore - 5600001) in any way or any firm (including M/s. Prerana Motors, No. 132, Kantha Court, Lalbagh Road, Bangalore - 560027) of which any of them is a partner or in control thereof, directly or through any other person shall also not deal with or dispose of any assets except in the usual course of business. Each of them shall, however, be entitled to withdraw upto Rs. 10,000/- (Rupees Ten Thousand only) from any one of his/her bank account. They are, of course, entitled to apply to this Court for further directions.

5. For further orders, list the matter on 11.2.1997.

6. The Canara Bank has filed its response. Mr. Jagdeep Kishore, learned counsel for PNB states that they shall file the response by 10th February, 1997.

7. It is stated by Mr. Salve that response/affidavit on behalf of RBI will be filed during the course of the day.

8. The affidavits of the two Directors (nominees of the Reserve Bank of India on the Board of NBI) are also being filed today.

9. So far as the other directors of NBI to whom notice has been issued, namely - Ms. Tajwar Rehman Sawhney, Mr. Sudershan Lal, Mr. SS Ranade and Mr. J.K. Sawhney are concerned, notices have been served upon them and they are present in Court in person. They shall await the orders to be passed on 11.2.1987.

SCALE (PIL) 1981-97 1005
SHIV SAGAR TIWARI *Petitioner*

VS

UNION OF INDIA & ORS. *Respondent*

CORAM: KULDIP SINGH AND B.L. HANSARIA, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — GOVERNMENT ACCOMMODATION — Unauthorised allotment — Hearing of arguments concluded on the Gupta Report — Court directs issue of public notice.

Order dated September 30, 1996 in W.P. (C) No. 585/94 [1997(2) SCALE (SP) 2]

1. Mr. Altaf Ahmad, learned Additional Solicitor General states that the 5th and final Report shall be placed on record by the CBI by November 15, 1996.

2. We have concluded the hearing of arguments based on the Gupta Report. Mr. Ranjit Kumar has suggested that all those persons who have been recommended to be evicted and also those who may be directed to pay penal licence-fee should be given hearing. Although all the concerned persons are fully aware about the proceedings which are going on in this Court and they have been given full hearing by the Committee, we direct the Director of Estates to issue a public notice asking those persons to be present in this Court in person or through counsel, on October 9, 1996 at 2. p.m. They shall be heard if they have any objection against the Committee report or in respect of their categorisation.

3. To come up on October 9, 1996 at 2 p.m.

4. The Committee shall give its report regarding Category III on or before October 31, 1996. To come up on November 4, 1996.

SCALE (PIL) 1981-97 1006

KRISHNA MOHAN SHUKLA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, CJI., SUJATA V. MANOHAR AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — BHOPAL GAS TRAGEDY — INTERIM RELIEF TO VICTIMS — Delay in — Court gives last opportunity to State and grants further time.

1. The affidavit filed by Mr. D.S. Jain, Registrar in the office of the Welfare Commissioner, Bhopal of July, 1996 given details regarding the payment of compensation in Annexures 'A' and 'B' thereto. The petitioner and the learned counsel for the victims would like to file their responses within two weeks. The matter will come up within two weeks thereafter to enable the counsel for the Union of India to respond thereto.

2. The grievance made in the reply affidavit of the petitioner is that from September, 1992 to 15th August, 1993 the State Government invited claims from victims for interim relief on the basis of voter's list, ration card and Government certificate etc. and almost a lakh of persons responded thereto. It is further averred that in the second phase from 16.8.93 to 28.3.94 the claims of children were invited on the basis of their parents/guardians claims and even though those claims have been filed, no interim relief is being granted, with the result that some victims have in sheer frustration, taken recourse to Civil Courts for securing interim relief. The learned counsel for the State of M.P. has not responded to the averments in the affidavit filed way back on 4th March, 1996. As a last opportunity, we grant him time of three weeks to respond. He will respond to the other claims also made in that affidavit so that a final view can be taken in regard thereto. Let the matters come up after four weeks.

Order dated August 5, 1996 in W.P. (C) No. 66/95 [1997(2) SCALE (SP) 3]

SCALE (PIL) 1981-97 1007

VELLORE CITIZENS WELFARE FORUM *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH, FAIZAN UDDIN AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — TANNERIES IN TAMIL NADU — Delay in appointment of the Authority — Court makes certain observations.

1. Application for extension of time is rejected. It is surprising that the Government of India in the Ministry of Environment is not taken note of the environmental degradation which has resulted because of the operations of tanneries in the 5 districts of Tamil Nadu. A time-schedule has been fixed in the judgment. The first step in the process is the appointment of an authority under Section 3(3) of the Environment Protection Act. Any delay in the constitution of the Authority would further delay the execution of the total scheme envisaged under the Judgment. We gave enough time to the Government of India to constitute the Authority. A bald affidavit has been filed. Nothing has been brought to our notice why during the period of 4 weeks the Government of India could not constitute the Authority. We re-iterate that the directions of this Court shall have to be complied with.

2. To come up on October 4, 1996 for further proceedings in the matter.

Order dated September 30, 1996 in W.P. (C) No. 914/91 [1997(2) SCALE (SP) 3]

SCALE (PIL) 1981-97 1007

WORLD SAVIORS *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, CJI. AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — U.P. — Court issues certain directions.

1. By the Notification dated Ist February, 1989, the criteria for categorisation of red industries was set out in paragraph C (1) (2) and (3) of the Notification and thereafter, the Notification proceeded to state that the following industries *appear to fall* under this category covered by all the points as above and enumerated as many as 45 processes concerning various items of manufacture. The use of the word 'appear to fall' clearly indicates that this was a tentative understanding at the relevant point of time and each industry belonging to the stated manufacturing process had to be identified for the purpose of determining whether it fell within the red category answering the criteria indicated in paragraph C (1)(2) and (3) of the Notification. Pursuant thereto, the U.P. Pollution Control Board undertook an exercise and classified the industries falling within the green, orange and red categories. The Govt. of India did not agree with their

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Order dated September 27, 1996 in W.P. (C) No. 320/94 [1997(2) SCALE (SP) 4] classification in its enterity but it has yet to state what exercise it has undertaken to confirm its tentative classification. We would, therefore, like the Govt. of India to file an affidavit keeping in view the events that have taken place during the pendency of this petition within four weeks from today. In doing so, it will also keep in mind the additional affidavit filed on behalf of the Union of India by Shri R. Anandakumar.

2. List the petition after four weeks.

SCALE (PIL) 1981-97 1008

PRAKASH SINGH & ORS. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: A.M. AHMADI CJI, SUJATA V. MANOHAR AND G.B. PATTANAIK, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — POLICE INVESTIGATIONS — Transparency in — Court grants further time in the matter.

1. The learned counsel for the petitioners states that certain States have still not filed their response. They are the States of Tamil Nadu, Karnataka, Kerala, Bihar, Arunachal Pradesh, Nagaland, Tripura, Meghalaya, Jammu and Kashmir, Haryana, Punjab (Mr. HS Munjral states that he is filing the affidavit today), Rajasthan, Mizoram and U.P. It will be presumed that they do not propose to file any affidavit since they have not done so even though time has expired and no request is made. Any State which still desires to file the affidavit may file it in the course of the day.

2. The National Human Rights Commission has filed an affidavit of Shri R.V. Pillai, Secretary General. Mr. Dasai, the learned Attorney General, states that while a copy of the affidavit has been served on him, the annexures to the affidavit have not been served. Mr. Sodhi states that he is just passing on the annexures to the learned Attorney General. The learned Attorney General states that he would need some time to respond to the affidavit. Mr. Sodhi also seeks permission to file the annexures in the Court. He may do so in the course of the day.

3. Learned Attorney General also states that the Law Commission of India has since submitted its Report and there are certain recommendations made therein having a bearing on the question under examination in the present proceedings. He states that as soon as the Report is tabled before the Parliament, he would produce copies thereof for the perusal of this Court so that the views of the Law Commission formulated after discussion with concerned authorities could be of assistance to this Court. We quite agree with the learned Attorney General that it would be an important piece of material to which this Court would like to refer.

4. Mr. Sodhi is permitted to inspect the file to enable him to ascertain the views of those States which have filed their responses. List after two weeks.

Order dated January 24, 1997 in W.P. (C) No. 310/96. [1997(2) SCALE (SP) 5]

SCALE (PIL) 1981-97 1009

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — TAJ AREA — Court directs the Secretary, Ministry of Human Resource Department, Department of Culture, Government of India, and also Secretary, Urban Development Department, Government of India, to take a decision on the proposal to declare Agra as "World Heritage City", within two months of the receipt of this order.

1. Pursuant to this Court's order dated December 17, 1996, Mr. P.K. Mohanty, Director, Department of Urban Development, Government of India and Mr. R.C. Aggarwal, Director, Archaeological Survey of India are present in Court. According to Mr. P.K. Mohanty, it is for the Human Resource Development Department, Department of Culture, Government of India to consider the question of declaring Agra as a "World Heritage City". Mr. Aggarwal on the other hand, states that Department of Culture can only declare a Monument as World Heritage and not a city. According to him, it is for the Ministry of Urban Development to declare the City as a" World Heritage City" We do not wish to comment on the inner functioning of the Government Departments. The learned counsel for the Government of India has placed before us a letter dated May 3, 1995 addressed by Dr. S.K. Mahapatra, Secretary, Department of Culture, Ministry of Human Resource Development, Government of India, New Delhi to Mr. J.M. Lyngdoh, Secretary, Department of Tourism, New Delhi, wherein it is stated that the Department is already examining the proposal to declare Agra as a "World Heritage City". It is, thus, obvious that the Department of Culture is seized of the matter and a decision has to be taken by the said Department. Be that as it may, it is for the Government of India to consider and finalise this matter. We direct the Secretary, Ministry of Human Resource Department, Department of Culture, Government of India, and also Secretary, Urban Development Department, Government of India, to take a decision on the proposal to declare Agra as "World Heritage City", within two months of the receipt of this order. If it is necessary to consult the State Government for this purpose, that may also be done.

2. Copy of this order be sent to the two Secretaries within 30 days from today.

Order dated December 19, 1996 in W.P. (C) No. 13381/84 [1997(2) SCALE (SP) 6]

SCALE (PIL) 1981-97 1009

M.C. MEHTA *Petitioner*

VS

KAMAL NATH & ORS. *Respondent*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — LAND — Illegal allotment of land situated on the banks of river Beas to a motel in which the family members

Order dated December 19, 1996 in W.P. (C) No. 182/96 [1997(2) SCALE (SP) 7]

of Kamal Nath are vitally interested — Judgment reported in 1996(9) SCALE 141 — Show cause notice on (i) why the Motel be not asked to pay compensation to reverse the degraded environment and (ii) why pollution fine, in addition, be not imposed — Court grants time.

1. This Court while disposing of the main matter on December 13, 1996 directed as under:

> "3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various construction made by the Motel in the river bed and the banks of the river Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect.
>
> 4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.
>
> 5.......
>
> 6.......
>
> 7.......
>
> 8. The Motel shall show cause on December 18, 1996 why Pollution fine and damages be not imposed as directed by us, NEERI shall send its reports by December 17, 1996. To be listed on December 18, 1996."

2. Pursuant to the above quoted direction NEERI has filed its report. A copy of the report was given to the learned counsel for the Motel yesterday. Show cause notice to the Motel has been given on 2 counts - (i) why the Motel be not asked to pay compensation to reverse the degraded environment and (ii) why pollution fine, in addition, be not imposed. Mr. H.N. Salve, learned counsel appearing for the Motel states that he intends to file counter to the report filed by the NEERI. He has asked for short adjournment. We are of the view that prayer for adjournment is justified.

3. We, however, make it clear that this Court in the judgment dated December 13, 1996 has found as a fact that the Motel by constructing walls and bunds on the river Banks and in the river Bed, as detailed in the judgment, has interfered with the flow of the river. The said finding is final and no argument can be permitted to be addressed in that respect. The only question before this Court is the determination of quantum of compensation and further whether the fine in addition be imposed, if so, the quantum of fine.

4. List on 4.2.1997.

SCALE (PIL) 1981-97 1010

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — INDUSTRIES IN DELHI — Court issues directions in respect of 337 'H' category industries.

Order dated December 19, 1996 in I.A. No. 18 and 22 in W.P. (C) No. 4677/85 [1997(2) SCALE (SP) 8]

I.A. No. 18:

1. No. orders.

I.A. No. 22:

2. After hearing learned counsel for the parties, the Court gave a number of directions in respect of 337 'H' category Industries.

3. The Chairman, Delhi Pollution Control Committee to publish the order in 'H' category Industries in two English and two Hindi newspaper for three consecutive days. (No need to send individual orders by the office).

SCALE (PIL) 1981-97 1011

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — CETPs IN DELHI — Court issues directions for their construction.

1. Mr. Swaraj Kaushal, learned counsel for the Government of NCT Delhi and the Delhi Pollution Control Committee states that there are two problems facing the projects relating to the construction of 15 Common Effluent Treatment Plants (CETPs). The first problem highlighted by the learned counsel is regarding the land which has been earmarked by NEERI for the location of the CETPs. The details of the lands identified by the NEERI for the 15 CETPs. Are as under:

S. No.	Location of Indl. Estate	Land Available in Sq. Mtrs. (Approx.)	Land Agency
1.	Anand Parbat	10981.00	Delhi Admn.
2.	Badli	7000.00	Director (Industries) DDA
3.	Nangloi	6059.85	DDA
4.	GT Karnal	2646.00	DDA
5.	Jhilmil	8118.00	DDA
6.	Lawrence Road	3542.00	DDA
7.	Mangolpuri Phase-I	1800.00	DDA
8.	Mayapuri Phase-I	5400.00	DDA
9.	Mohan Co-op. Extn Block-B	6824.00	DDA
10.	Najafgarh Road	3000.00	Swatantra Bharat Mills
11.	Naraina Phase-I	9620.00	DDA
12.	Okhla Indul. Area Phase -I	10834.00	DDA
13.	Okhla Indl. Estate.	1310.00	Director of Industries. DDA
14.	SMA Indl. Area	7727.00	DDA
15.	Wazirpur	12317.00	DDA

2. The 11 plots of land belong to the DDA. Mr. V.B. Saharya, learned counsel for the DDA states that the price of the land has to be determined by the Lt. Governor of Delhi.

Order dated December 17, 1996 in I.A. No. 22 in W.P. (C) No. 4677 of 1985 [1997(2) SCALE (SP) 8]

We agree with him. Keeping in view the urgency of the matter, we direct the DDA to hand over the land identified by the NEERI or any other land as a substitute which NEERI may identify, to the Commission (Industries), Government of NCT Delhi, before February 15, 1997. The possession shall be handed over to the Commissioner (Industries) free from all encroachments and encumbrances. We further direct that the Government of NCT Delhi shall pay the price of the land as determined by the Lt. Governor, Delhi. The Lt. Governor is the Chairman of the DDA and also the Executive Head of the Government of NCT, Delhi. We have no doubt that he will keep the balance between the two.

3. The three lands are owned by the Government of NCT Delhi. The NCT Delhi shall hand over possession of these lands to the Commissioner (Industries), before February 15, 1997.

4. So far as the one piece of land which is owned by Ms. Swatantra Bharat Mills, is concerned, the land has to be surrendered to the DDA in terms of this Court's order in I.A. No. 22 in this Writ Petition, dated May 10, 1996. In terms of the said order, the land has to be kept green. Mr. P.C. Jain states that he, in consultation with NEERI, would find alternative land for this purpose. We make it clear that this should be done within two weeks from today and whatever land is selected finally for the setting up of CETP for the Najafgarh Road Project, the possession thereof shall be handed over to the Commissioner (Industries) by February 15, 1997.

5. The second problem relates to the fund. Mr. Kaushal states that the share of the Government of NCT Delhi shall be deposited with the Delhi State Industrial Development Corporation (DSIDC) before January 31, 1997. Mr. Malhotra, learned counsel for the Union of India states that the Government of India shall deposit its share within one week of the deposit by the Government of NCT Delhi.

6. Keeping in view the statement of Mr. Malhotra, the Union of India shall deposit their share of the money before February 10, 1997. We have no doubt, as stated by Mr. Altaf Ahmad, learned counsel for the IDBI, on the last hearing, that the IDBI shall deposit its share immediately after February 10, 1997. We direct the IDBI to deposit its share with the DSIDC before February 20, 1997.

7. The third problem placed before us is regarding the time-schedule for the construction of these projects. We do not wish to lay down any time-schedule as at present. We request the Lt. Governor, Government of NCT Delhi, who is taking keen interest in environmental protection so far as Delhi Territory is concerned, to fix a time-schedule for the construction of these Projects and issue necessary directions.

8. This Court is monitoring all the 15 Projects which include the Project pertaining to Wazirpur Industrial Estate. It is not disputed that the industries operating in the said Estate have already deposited some money with the Delhi Water Supply Undertaking. The learned counsel for the Wazirpur Industries states that the amount is more than 1 crore. We are of the view that the amount already with the Undertaking may be adjusted towards the share of the industries of Wazirpur towards the construction of the CETP.

9. The Chief Secretary, Government of NCT Delhi shall examine this matter and take a decision in the light of the suggestions given by us.

I.A. NO. 35 in W.P. (C) 4677/1985

10. List on December 18, 1997.

11. List the matter relating to Child Labour on December 18, 1997.

SCALE (PIL) 1981-97 1013
DELHI DEVELOPMENT AUTHORITY *Petitioner*
VS
SKIPPER CONSTRUCTION AND ANR. *Respondents*
CORAM: B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — Update of order reported in 1997(1) SCALE 532.

1. Mr. R.C. Suneja is present in person today. Mr. R.K. Anand appears for him. A copy of the Report of Saharya Commission shall be served upon him today. The matter will he taken up on Friday, February 7, 1997. Meanwhile Mr. Suneja will also file an affidavit setting out the properties held by him, his wife and his children and also disclose the interest held by him in companies/firms, as the case may be, in his name, his wife's name and in the name of his children. Mr. Suneja, who is present in the Court, undertakes to file such an affidavit. Mr. Y.P. Narula appears for the Canara Bank and Mr. Jagdeep Kishore appears for the Punjab National Bank. Copies of the said Report may also be served upon them. Their responds shall also be filed by Friday, February 7, 1997.

2. List the matter on Friday, February 7, 1997.

3. In the Order dt. 31.1.97 at Page 4 notices were directed to five Directors of the New Bank of India. Notice to Sh. P. Krishnamurthy is dispensed with.

Order dated February 3, 1997 in S.L.P. (C) No. 21000 of 1993 [1997(2) SCALE (SP) 10]

SCALE (PIL) 1981-97 1013
BUFFALO TRADERS WELFARE ASSON. *Appellants*
VS
U.O.I. & ORS. *Respondents*
CORAM: S.P. BHARUCHA, S. SAGHIR AHMAD AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — IDGAH SLAUGHTER HOUSE — Closure of — 1997(1) SCALE SP-23 — The order dated 19.2.1996 in Civil Appeal No. 3769 of 1996 and connected matters operates and shall continue to operate pending the disposal of these Civil Appeals, notwithstanding the orders dated 8.7.1996 and 30.11.1996 in Writ Petition No.4677 of 1985.

1. By consent of the counsel aforementioned and the writ petitioner in person, the following order is passed:

2. The order dated 19.2.1996 in Civil Appeal No. 3769 of 1996 and connected matters operates and shall continue to operate pending the disposal of these Civil Appeals, notwithstanding the orders dated 8.7.1996 and 30.11.1996 in Writ Petition No. 4677 of 1985.

3. The writ petitioner shall be at liberty to bring to the notice of the bench hearing the Civil Appeals the orders on the Writ Petition and to move for expeditious disposal of the Civil Appeals.

4. Orders on the I.As. accordingly.

Order dated February 3, 1997 in IA No. No. 4 in C.A. No. 3769/96. with I.A. Nos. 5-6 in IA No. 3 in CA Nos. 3774 & 3769/96 & I.A. No. 7 in CA No. 3774/96 and IA No. 8 in CA No. 3769/96 with I.A. No. 2 in W.P. (C) No. 452/95. [1997(2) SCALE (SP) 12]

SCALE (PIL) 1981-97 1014

ANUKUL CHANDRA PRADHAN *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — HAWALA CASE — Court records the presence of the Revenue Secretary and CBI Director in the hearing of December 16, 1996.

1. The Revenue Secretary Shri N.K. Singh and the CBI Director Shri Joginder Singh also are present. They are heard.

2. List the matter on 24.1.97.

Order dated December 16, 1996 in W.P. (C) No. 640/95. [1997(2) SCALE (SP) 12]

SCALE (PIL) 1981-97 1014

DELHI DEVELOPMENT AUTHORITY *Petitioners*

VS

SKIPPER CONSTRUCTION AND ANR. *Respondents*

CORAM: B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — SKIPPER CONSTRUCTION — Follow up of order reported in 1997(1) SCALE (SP)3.

1. Mr. Ravindra Nath, learned counsel for the Embassy of Israel states hat he requires some time to get the response and to submit the response of the Embassy in the matter of purchase of the building of which it is the tenant. Mr. Ravindra Nath also requests that a copy of the valuation report submitted by M/s Price Water house may be furnished to him Since it may help the Embassy in making up its mind on the question of valuation. (A copy of the said report has been handed over to Mr. Ravindra Nath in the Court itself). For this purpose, list the matter on 27th January, 1997.

2. The office has put up a report dt. 18.12.96 asking for certain orders. As requested by Mr. Justice R.C. Lahoti Commission, we direct that the Bank Accounts of the Commission may be closed transmitting the surplus amount of Rs. 1,39,00,503.95p only including the interest thereon to this Court. The two cheques made out in favour of Shri Deepak Batra, Janki Das and others may also be made over to this Court. The said amount shall also be held by the Registrar to the credit of this matter alongwith other amounts which are already lying to the credit of this case. This amount shall also be placed in fixed deposit for a period of one year in a nationalised bank.

3. At the request of the Union of India, the time for concluding the disciplinary enquiries against the officers, (pursuant to the earlier orders of this Court) is extended by three months. It shall be open to the Union of India to bring this order to the notice of the U.P.S.C. and ask for its advice at an early date.

4. List the matter on 27th January, 1997.

Order dated December 19, 1996 in I.A. Nos. 16, 23, 24, 25, 27, 29, 30, 31, 32, 36, 38 15, 32A 33, 34 and 50, 51-54 in SLP (C) No. 21000/93. [1997(2) SCALE (SP) 13]

SCALE (PIL) 1981-97 1015
M.C. MEHTA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — TAJ AREA — Court issues further directions.

Item 'A' of the Office Report dt. 11-9-1996

1. Pursuant to this Court's order dated April 10, 1996 and subsequent order dated May 10, 1996, Mr. P.C. Gupta, General Manager, Gas Authority of India has filed an affidavit. It is stated in the affidavit that necessary directions in the pipe-line design corrosion protection, protection during construction and during operations have been taken by the Gas Authority of India. It is for the Central Pollution Control Board or the State Pollution Control Board concerned to examine the legal position and do the needful, if anything is to be done under law. Mr. Gupta, in para 5, has further stated as under:

> "However, in its endeavour GAIL has not received sufficient response from the industrialists in the City of Agra, where prospective industrial consumers of gas have not yet worked out how to convert the cupola furnaces to gas fired ones. Hence, GAIL apprehends that after it has undertaken provisioning such an expensive infrastructure exercise, it may not have enough consumers for the gas supplies in Agra at least during the near future of commencement of the supply. This Hon'ble Court may therefore, direct the prospective consumers to inform this Hon'ble Court of their willingness to convert to gas."

2. Mr. Sibal and Mr. Parekh, learned counsel appearing for most of the industries have informed us that the industries are taking steps to approach the GAIL for gas connection. Mr. Parekh further states that most of them have already done it. This is a matter between the industries and GAIL. It is for their benefits that the industries should approach the GAIL for gas connections.

Item 'B'

3. Mr. Satish Chandra, learned counsel appearing for Agra Development Authorities has very fairly stated that a building where the Corporations and the photographers are proposed to be shifted has been located. He further states that the building is 200 yds. away from the boundary of the Taj. He states that partition etc. in the building is to be done and some other formalities are to be completed. He states that he would be in a position to make a positive statement in this respect after two weeks.

4. List the matter on 3rd October, 1996.

Order dated September 12, 1996 in W.P. (C) No. 13381/84. [1997(2) SCALE(SP) 17]

SCALE (PIL) 1981-97 1015
RANJAN DEB *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

Order dated September 24, 1996 in W.P. (C) No. 16/91. [1997(2) SCALE (SP) 18]

PUBLIC INTEREST LITIGATION — ENVIRONMENT — WASTE WATER MANAGEMENT SYSTEM — PURI — Court issues directions regarding funding of the project.

1. Pursuant to this Court's order dated September 9, 1996 Dr. BK Handa, Senior Scientist, NEERI is present in Court. Dr. Handa has explained to us the project which has been undertaken by NEERI at Puri. Dr. Handa has also taken us to the progress report regarding project dated September 3, 1996. According to Dr. Handa the waste water management system which has been installed at Puri is almost complete. According to him the totality of the waste water coming from the city of Puri shall be treated by the project and the B.O.D. level in the treated water shall be within permissible limits. He has further stated that NEERI has also undertaken the plantation of trees on the area measuring about 61 hecters. According to him the trees have already been planted on that area. He further states that instead of discharging the treated water into the sea, the water shall be consumed in the plantation and for irrigation.

2. Dr. Handa has further stated that the outlines of the project for the construction of sewerage system in the city of Puri has been indicated in the progress report dated September 3, 1996. The report also indicates the magnitude of the cost which is about 21.77 crores for the year 2025.

3. Keeping in view the importance of the city of Puri, the Government of India in the Ministry of Environment should also contribute towards the construction of the sewerage system in the city of Puri. The learned counsel for the Government of India states that he would seek instructions and have the response of the Government of India in this respect. Mr. Misra, for the State of Orissa, also states that he would have instructions from Government of Orissa and file affidavit indicating as to within how much time the Government would be in a position to make sufficient funds available to start the projects. The Government of India and the State of Orissa may file their affidavits within two weeks from today.

4. We place on record our thanks for Dr. Handa for assisting us.

5. To come up on 10th October, 1996.

SCALE (PIL) 1981-97 1016

M.C. MEHTA *Petitioners*

VS

ARCHEOLOGICAL SURVEY OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ANCIENT MONUMENTS — TOMBS OF ZAUQ AND GHALIB — PRESERVATION OF MONUMENTS — Court issues certain immediate directions for compliance.

1. We have before us the report submitted by a Committee headed by Director (Monuments), Archaeological Survey of India constituted by this Court by the order dated September 20, 1996. The Committee has surveyed the area of Nabi Karim for the purpose of locating the place where the tomb of Shaik Muhammad Ibrahim Zauq was once existed. Apart from the Director (Monuments) ASI, the Committee comprises

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Order dated October 29, 1996 in W.P. (C) No. 476/96. [1997(2) SCALE (SP) 25]

of Dr. W.H. Siddiqi, Former Director, ASI, Dr. Khaliq Anjum, Secretary, Anjuman Tarakki-e-Urdum Mr. Khwaja Hasan Sani Nizami, Mr. Habib Khan, and Mr. Firoz Bakht Ahmad. Mr. Siraj Pracha also assisted the Committee.

2. Prior to the constitution of the above said Committee, this Court by the order dated August 7, 1996 requested three lawyers of this Court, namely, S/sh. R.F. Nariman, Ranjit Kumar and Krishan Mahajan to survey the area and file a report. This Court in the order dated August 23, 1996 considered the report of the three learned lawyers in the following words:

> "Pursuant to this Court's order dated August 7, 1996, S/S R. F. Nariman, Ranjit Kumar and Krishan Mahajan, three advocates of this Court visited Ghalib's tomb and the tomb of poet Zauq. they have placed their report dated August 22, 1996 on record......... So far as Zauq's tomb is concerned, the report is hightly pathetic. Even the tomb has been removed from the grave and a public lavatory has been constructed. The public lavatory has been constructed right on top of the grave. The Committee made investigations in the area and have come to the conclusion that the grave of Zauq is right under the lavatory. Report indicates that insects and human faces were sprawled all around with open manholes full of human waste. There was an awful nauseating stink-a positive health hazard to the hundreds of residents living next door. The tomb is nowhere visible as it has been buried about ten feet below of the foundation on which the toilets stand. One of the residents of the area was even willing to give a part of his house if the tomb of Zauq was to be re-claimed. We are prima facie of the view that the lavatory need to be re-located with immediate effect. The grave of Zauq which is under the toilet need to be restored with immediate effect and a suitable monument constructed. The Monument may also be declared as a national protected monument. We are told that the toilets have been constructed by the M.C.D. The M.C.D. shall place the records before this court and give an explanation as to how and under what circumstances, the toilets were built on the grave of Zauq. The least to say, it is highly defamatory and an utter disgrace to a great poet who gave immortal poetry to the country.
>
> It is pity that poets like Ghalib and Zauq who brought glory to the country are being dealt with in such a shabby manner. The least the nation could do is to build some suitable monument for them.
>
> We are thankful to our lawyer friends for visiting the area and assisting this Court with the report. We place on record our appreciation for all the three advocates."

3. Mr. M.C. Mehta has taken us through the report which has been placed on record along with an affidavit filed by Sh. D.B. Sharma, Superintending Archaeologist, ASI. It would be useful to reproduce the relevant parts of the report:

> "The earliest reference to the existence of the grave of Zauq is available as early as 1919 when the famous historian Bashiruddin Ahmad visited the site for writing his book *Wagiat-i-Darupal Hukumat-i-Dihli (History of the Delhi Imperial City, Agra, Shamsi Press, 1919)*. Bashiruddin Ahmad has given a vivid description of the grave of Zauq as well as its condition then prevailing. According to him the grave of Ibrahim Zauq is situated in the Kallu-ka-Takiya a famous graveyard near Qadam-Sharif. There were seven more graves alongwith the grave of Zauq. It had an enclosure

wall and there was a tablet on the head side of the grave containing an epitaph in urdu verse with date of his death.

(1) Allah is Most Great.

(2) The parrot of India Ustad Zauq left the garden of the world for the garden of paradise. If some body asks for the year of his death, then O Zafar say that Zauq was at the head of those who received mercy of Allah in .... AH 1271. (English translation of epitaph of the grave of Zauq).

Bashiruddin Ahmad also mentions that the grave of the famous poet of India who was the tutor to last Mughal Emperor Abu Zafar Muhammad Sirajuddin Bahadur Shah is lying in an uncared for condition and its boundary wall (enclosure wall) had fallen at many places and he also states further that if such negligence continued it may not be possible to find out even the traces of the grave of this famous poet.".....

"An interesting evidence regarding the existence of the grave of Zauq till the end of 1950 is the inspection note drawn on 16.12.1950 (Pl.IX; Annexure - I) by Shri Maulana Hafizur Rahman of Delhi Waqf Board and the action taken by the Waqf Board Committee for carrying out the repairs to the grave as well as it enclosure. The inspection note mentions the condition of the grave and the repairs that it needed for its preservation, particularly for providing doors and railing etc.

The next reference to the existence of the grave of Zauq till the end of July 1952 comes from the action taken by Police authorities on a complaint lodged (Pl.X' Annexure-II) by Shri Mohammad Jafri Offg: Nazir-e-Aukaf, Delhi on 23rd July, 1952 regarding the grave of Zauq. The police report submitted over the complaint of Shri Mohammad Jafri mentions that the grave of Zauq was quite intact (Pl.XI). The tablet of the grave however, was missing which the police authorities remarked that it was lost (damaged) due to the disturbance of the days of 1947.

It appears that the grave of Zauq was intact and was also in existence till the end of July, 1952. The abovementioned headstone containing the epitaph, however, was missing since July, 1952. As per revenue records available in Dy. Commissioner's office and Delhi Development Authority, Zauq's grave was located in Khasra No. 52, Mauja Qadam Sariff, Nabi Karim. The Commissioner of Municipal Corporation vide letter No. 157/C&C dated 6.1.1979 stated that a public latrine block was constructed in the year 1961 by the MCD in Nabi Karim graveyard to cater the need of the residents of the area. It is now learnt that this latrine block is situated on the grave of Ustad Zauq, a noted Urdu Poet and it is desirable that the same is removed from its present site. The proposal was placed before the Standing committee for according sanction under section 197-199 of Act for acquiring land measuring 150 sqd. falling under Khasra No. 52, Mauja Qadam Sariff and the same was duly approved by the Committee (Annexure-III)." ......

"*CONCLUSION:*

All literary reference pertaining to location of the grave of great Urdu Poet, Zauq Dehlavi was consulted by me in different libraries, National Archives, Delhi Archives and other research institution of reputed fame. Apart from this, various scholars on the subject were consulted in person. The Committee duly constituted by Hon'ble Supreme Court met four times at different places and discussed the matter pertaining to location of Zauq's grave in detail. The area of Qadam Sariff graveyard, Takia-Muhammad Ali near Nabi Karim, Grave of Baqi-Billah at Nabi Karim and Baghichi Allauddin were extensively explored and combed by me to locate the grave of Shaikh Muhammad Ibrahim Zauq. The Committee also visited the site alongwith renowned scholars on the subject. On the basis of available literary reference, explorations and other deliberations the committee is of the opinion that location of the Zauq's grave is the same where once in the year 1961, MCD constructed lavatory blocks to cater the needs of the residents of the area. All research, verification, surveys on the subject lead to the conclusion that enclosurse wall containing grave of Ustad Zauq as originally seen by Bashiruddin Ahmad in the year 1919 was removed alongwith several other graves and levelled to the ground for providing public conveniences to the residents of this locality."

4. It is, thus, crystal clear from the report of the Committee quoted above that till the year 1952 the grave of Zauq was intact at the place where it has been located by the Committee under the directions of this Court. It is a pity that instead of preserving the grave as a national and protected monument it was totally destroyed due to the negligence of those who should have preserved the same. After the restoration of the grave and construction of suitable monument in memory of the great Poet, we shall take up the question of fixing the responsibility of the Department/persons who miserably failed in preserving the monument.

5. The report further indicates that the location of Zauq's grave is at a place where the Municipal Corporation of Delhi constructed lavatory blocks to cater the residents of the area. It is beyond our comprehension how on the grave of Poet Zauq which was in existence on the spot till 1952 lavatories could be constructed by the MCD in the year 1961-62. We are of the view that the construction of the public lavatories on the grave was the worse type of sacrilege to the literature and the literary men of the country. It was, indeed, a gross insult and defamation to the great Poet. Responsibility shall have to be fixed in this respect.

6. Keeping in view the report which has been extensively quoted above and other material on the record, we order and direct as under:

1. A team of the MCD along with ASI shall survey the area and come to a positive conclusion as to how much area is required to preserve the grave and also to build a reasonable monument therein. The MCD shall depute an expert planner and an architect for this purpose. This shall be done within three days from today.

2. Apart from the area mentioned in para 1 above, the said team shall also locate some area at a reasonable distance where the public convenience (lavatories) etc. can be re-constructed after demolishing the same from the present site.

This shall also be done within three days from today.

3. As soon as the area is located by the officers mentioned above a report shall be sent to Delhi Administration, MCD, and the DDA. A copy of the report shall also be placed on the record of this Court. The report shall indicate the exact area in sq.ft/sq. yds/khasra numbers with proper maps and plans. This shall be done both in relation to Zauq monuments and the re-construction of lavatories.

4. The Commissioner, MCD shall have the status/ownership of the land/area identified by the above mentioned officers verified. It would be necessary to find out whether the area is to be acquired or dealt with in any other manner. Mr. Siraj Paracha,

Chairman of the Delhi Waqf Board states that the area which is proposed for the grave-yard and monuments comes within the control of Waqf Board. he has further, very fairly stated, that the Waqf Board has no objection in surrendering the area for the purpose of constructing the monument. It is, however, not disputed that some residents have constructed houses on the area and they are residing in those houses since long. The Commissioner shall examine how the person who are residing in the houses constructed by them in the said area can be rehabilitated. Mr. Saharya also undertakes to have the question of rehabilitation of these persons examined through the process of DDA. The Commissioner, MCD and Commissioner (Lands) DDA shall file compliance report in this Court within one week from today.

7. To come up on 6th November, 1996.

Report on Ghalib's Tomb

8. To come up on 6th November, 1996. A copy of the report be given to M/s. Ashok K. Srivastava, Kailash Vasdev, R. K. Maheshwari, advocates.

SCALE (PIL) 1981-97 1020

KADRA PAHADIYA & ORS. *Petitioners*

VS

STATE OF BIHAR *Respondent*

CORAM: A.M. AHMADI, CJI AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — PETTY CRIMINAL CASES — Cr.P.C. — SECTION 13 & 18 — Appointment of Special Judicial Magistrates and Special Metropolitan Magistrates — Early disposal of petty offence cases — Disposing the appeals Court issues certain directions. (Para 25).

Overruled: M.Narayanaswamy vs State of Tamil Nadu, 1984 Cr.L.J.1583.

Ahmadi, CJI.— Writ Petition No. 5943/80, along with Writ Petition No. 57 of 1979 *(Hussainara Khatoon)* was placed for final disposal on 4.8.1995. On that day the latter was finally disposed of but insofar as the former petition is concerned, counsel drew our attention to the point raised in his written submissions in regard to the appointment of Special Judicial Magistrates and Special Metropolitan Magistrates under Sections 13 & 18 of the Code of Criminal Procedure, 1974, (hereinafter called 'the Code') respectively. The disposal of the petition was deferred for considering this question.

2. Mr. Mukul Mudgal contended that the dockets of the Magistrates all over the country were swollen on account of petty cases which could be disposed of by the appointment of Special Judicial Magistrates and Special Metropolitan Magistrates in sufficient numbers and once these cases are taken out of the regular courts, the regular courts would be free to dispose of serious cases faster, and that would meet the requirement of speedy justice. He submitted that when cases are pending in such large numbers, there is no justification for not using a part of the system envisaged by the Code. According to him, it betrays indifference and lack of concern for speedy disposal of cases.

3. At this stage, it would be proper to mention the facts of Writ Petition No. 298/

Judgment dated March 19, 1997 in W.P. (Crl.) No. 5943 of 1980 with W.P. (Crl.) No. 298 of 1994. News Item Publ. in India Today dated 31.7.94 vs Chief Sectt., West Bengal & Anr. [1997(3) SCALE 93]

94 - yet another public interest litigation - based on an article published in the magazine, "India Today", in its issue dated 31.7.1994, with the caption "Ordeal of Innocents" by Sri Ruben Banerjee, narrating how rape victims are detained in Remand Homes for long periods, and are virtually undergoing imprisonment. Remand Homes are protective homes for women run by the State Government, in which *inter alia,* destitute victims of rape are received with a view to ensuring their safe custody, particularly where the victim is a minor and has no guardian who can be trusted with her custody. This also enables the Court to obtain their testimony during the trial of the offender, without there being hurdles such as the non-availability of the prosecutrix, or tampering by the accused by means of threats or allurement. What is reported by Sri Ruben Banerjee in his article is that nearly 150 rape victims are languishing in three Remand Homes in the State of West Bengal awaiting their release, which usually gets delayed if the trial of the accused is prolonged. Apart from giving an over-all view, the article also mentions three cases viz. those of Sarbani Ghosh, Rukhsana Khatoon and Swapna Mazumdar. Although the article was found sufficient to initiate proceedings under the writ jurisdiction of the court, we thought it proper to put Sri Ruben Banerjee to oath before issuing any notice to the State of West Bengal. Sri Ruben Banerjee filed an affidavit in support of his article and, *inter alia*, disclosed the real names of three victims mentioned in his article which was necessary for us to set in motion the process of law. The State of West Bengal filed an affidavit of the Director of Social Welfare without seriously disputing the state of affairs mentioned in the article. The three women mentioned in the article were ordered by the local courts of Session to be released on 29.7.1994, 4.7.1995 and 10.1.1995 respectively, subsequent to their attaining majority. The State also filed a list of inmates in various Remand Homes for girls which discloses that barring exceptions, most inmates are minors and the trial of the cases in which they are witnesses still remain pending. In respect of some inmates in District Shelter, Nadia, their ages have been omitted in the lists. Some inmates of these Remand Homes had already attained majority (18+_. To illustrate, the girls at serial Nos. 18 & 23, are both aged 19 and have been interned since 1994. The woman at serial No. 21 is aged 40 and has been in the institution since April, 1994. The information submitted shows that they are victims of some offence or the other but it does not disclose why such women who have already attained majority have not yet been released. The information reveals that despite this the disposal of their criminal cases has still been delayed, e.g., the inmate at serial No.1 came in the remand home of Liluah in 1987 and was still there on 30.7.1995 awaiting completion of trial of the accused. There are various other instances of the same kind. This brings into sharp focus the unhappy state of affairs in the criminal justice system existing in the State. In the meantime other writ petitions received from various jails concerning prolonged detention of prisoners were in progress. This case was also taken up after those matters.

4. On 4.8.1995, the learned counsel for the petitioners drew our attention to Section 6(4) of the Code which contemplates appointment of Judicial Magistrates of the IInd Class. Section 13 contemplates appointment of Special Judicial Magistrates by the High Court if requested by the Central or the State Government so to do, and Section 18 contemplates appointment of Special Metropolitan Magistrates by the High Court if requested by the Central or the State Government so to do.

5. We may reproduce Sections 13 and 18 at this stage:

"13. Special Judicial Magistrates. - (1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by.

or under this Code on a Judicial Magistrate of the first or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction."

"18. Special Metropolitan Magistrates. - (1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan magistrate, in respect to particular cases or to particular classes of cases, in any metropolitan area within its local jurisdiction:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Metropolitan Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class.

6. A brief legislative history for the introduction of Sections 13 and 18 in the Code may not be out of place. Before the enactment of the Code, a system of Honorary Magistrates in addition to regular stipendiary Magistrates was available. These Honorary Magistrates came from all walks of life. It was expected that, by virtue of their education, experience and contact with people, they would be able to deal with and effectively dispose of cases involving petty offences. This introduced the idea of participation of citizens in the administration of criminal justice. The institution of Honorary Magistrates was, therefore, functional in character and was considered to be a useful and valuable adjunct to the regular courts, particularly in the Metropolitan cities. Unfortunately, the institution of Honorary Magistrates came in for widespread and serious criticism within a short time. The criticism of misuse and abuse of the system led to the Law Commission recommending the appointment of Special Judicial Magistrates and Special Metropolitan Magistrates, vide Sections 13 and 19 of the draft Criminal Procedure Code. Section 13 of the draft Code provided for the appointment of Special Judicial Magistrates from amongst persons holding or who had held any judicial office under the Union or a State or possessed such other qualification as may be prescribed by the High Court. Similar was the position in respect of Section 19 of the draft Criminal Procedure Code, which provided that a person holding or who has held a judicial post or any other person who possessed other qualifications as may be prescribed, could be appointed a Special Metropolitan Magistrate. The Law Commission had taken note of the experience of the judicial post for the purpose of appointment and conferment of power of Special Judicial Magistrates and Special Metropolitan Magistrates with the object of securing the expeditious disposal of criminal cases. The Joint Select Committee also took note of the criticisms against the system of Honorary Magistrates and expressed the view that the proper way to deal with the arrears of petty criminal cases was to appoint sufficient number of stipendiary Magistrates as a wholesome deletion of the institution of Honorary Members would give rise to problems in some States. The Joint Select Committee suggested that provision be made for the appointment of Special Metropolitan Magistrates and Special Judicial Magistrates with certain modifications in the earlier system. One of the suggestions was that the appointees should either be persons in Government service or those who have retired from Government service. As a result of these deliberations, the two provisions, Sections 13 and 18 came to be enacted in their present form.

7. It was contended that having regard to the pendency of a large number of cases in criminal courts all over the country, it is essential that the infrastructure contemplated by these provisions should be put to use so that, to begin with, sufficient number of Special Judicial Magistrates and Special Metropolitan Magistrates could be appointed, without unduly burdening the exchequer, for the disposal of cases which are triable summarily under Sections 260 and 261 of the Code as well as cases which fall in table I under Section 320 of the Code (compoundable by the parties). The counsel further submitted that there was no justification for the State Governments and the Central Government for not invoking the afore-mentioned provisions even after resolutions were adopted in this behalf by the Conference of Chief Ministers and Chief Justices in 1993 and which were later endorsed by the Law Minister's Meeting held in Calcutta on 17.11.1994. The Court, therefore, directed the issuing of notices to all the State Governments, except Jammu & Kashmir, as well as the Central Government to indicate whether or not the concerned States had invoked the aforesaid provisions and if not, the reasons therefor. The State Governments were also required to indicate how many traffic cases, or cases which fall in table I under Section 320 of the Code, were pending in their States. The Central Government was required to submit similar information in regard to the Union Territories. The Governments were given time upto 15.9.1995 to submit the required information and the matter was directed to be listed on 22.9.1995 for orders.

8. The Court carefully examined the information received from each State. So far as the State of Madhya Pradesh was concerned, it had not taken any action to request the High Court under Section 13 and 18 of the Code on the plea that it had forwarded a proposal to the Central Government to amend Section 13 of the Code. This explanation did not satisfy us. So far as Delhi was concerned, there were more than two lakh cases pending in the Magisterial Courts which had been distributed amongst 88 Metropolitan Magistrates who were required to work from 2.00 p.m. to 5.00 p.m. on every working Saturday. This would show that the time of 88 Metropolitan Magistrates had to be expended for petty cases. Despite such an arrangement, having regard to the huge number of traffic cases, a large number of them remained pending. We noted with disapproval the lack of initiative on the part of the administration in getting Special Metropolitan Magistrates appointed for clearing these petty cases and for placing the highly paid Metropolitan Magistrates for the disposal of petty matters. The State of U.P. had not taken any such initiative. The State of Karnataka disclosed that it had already taken the initiative by writing to the High Court, but the High Court had not taken action in the appointment of the Special Judicial Magistrates. So far as the State of Kerala was concerned, the High Court of Kerala informed the State Government that in the prevailing circumstances there was no need for appointment of Special Judicial Magistrates and/or Special Metropolitan Magistrates in the State. We directed the High Court of Kerala to inform us as to whether there was no pendency of traffic cases or other petty cases within the category of section 206 and 260 of the Code which could justify such a stand. The State of Himachal Pradesh had already invoked the aforementioned provisions and the High Court had, after framing rules regarding such appointments, conferred powers on three officers. So far as the State of Bihar is concerned, the Government had taken steps and the High Court had decided to confer such powers on suitable persons. The notification, however, had not been issued and it was not known how the power was proposed to be exercised. The Registrar of the High Court of Patna was, therefore, required to explain the situation. In the State of Punjab, the matter was pending with the High Court and the appointments were yet to be made. The High Court of Punjab & Haryana has framed the necessary rules. Later, the Registrar of the High Court informed us that six such appointments have been made. The State of Assam has appointed 97 IAS Officers as Special Judicial Magistrates. The States which had not responded to our direction were given further time.

9. The Registrar, High Court of Calcutta, Appellate side, vide his letter dated 14.12.1995, reported that the High Court had taken several steps for withdrawal of petty cases, appointment of Special Magistrate etc. and that the efforts had slowed down because the Government, upon the withdrawal of all petty cases more than five years old, had opined that the existing Courts could cope with the reduced volume of work, and that steps were now being taken to frame rules.

10. Later, we received information from other States. Orissa had 27,300 traffic/motor vehicle cases, 33,657 cases coming under table-I of section 320 of the Code and offences triable under Section 260 and 261 of the Code. We are told that the Chief Minister, Orissa had requested the High Court for appointment of Special Judicial Magistrates. In the Union Territories of Daman & Diu, Dadra and Nagar Haveli, as well as in Lakshadweep, since the amount of litigation was meagre, the Union of India submitted in an affidavit that there was no need to invoke the aforementioned provisions. The State of Sikkim took the same stand. The Government of Andhra Pradesh had already invoked the relevant provisions and the High Court of Andhra Pradesh had framed the necessary rules and notified the same on 28.3.1979. The State of Nagaland informed the Court that in view of the special situation in the State, where several other high ranking executive officers besides the Judicial Magistrates, were performing the duties of Judicial Magistrates, there was no need to invoke the provisions of Sections 13 & 18 of the Code. The State of Mizoram informed the Court that the total member of traffic cases in the State was only 55 and that a good number of Enforcement Officers under the Transport Department and quasi-Judicial Officers had been empowered to adjudicate and compound traffic offences, thereby leaving hardly any traffic offences to be tried by ordinary criminal courts. All the same, the

Government of Mizoram had initiated the process under Section 13 and 18 of the Code. The State of Gujarat had also initiated action and the High Court had framed rules. The High Court of Guwahati informed the Court that the Government of Assam had, from time to time, recommended the names of Executive Officers for consideration for appointment of Special Judicial Magistrates and that about 100 Officers have so far been appointed as Special Judicial Magistrates. The Government of Jammu & Kashmir informed the Court that the Courts of Special Judicial Magistrates had already been set up under Section 14 of the State Code of Criminal Procedure.

11. By an affidavit dated 27.10.1995, the Deputy Secretary, Department of Law, Government of Madhya Pradesh reported that the Government of Madhya Pradesh, vide its order dated 20.9.1995, has accorded sanction to appoint 29 Special Judicial Magistrates, IInd Class. The High Court of Madhya Pradesh, Jabalpur has framed the required rules.

12. The Kerala High Court informed this Court, vide an affidavit dated 31.10.1995, that the Government of Kerala has made no request except the communications sent pursuant to the order of the Court of 4.8.1995. In the light of the directions of the Supreme Court in the order dated 22.9.1996, the Acting Chief Justice had directed the Standing Committee of the Hon'ble Judges of the High Court of Kerala to consider the proposal for establishment of Special Courts to deal with compoundable offences. Some more time was requested for making necessary proposals to the State Government.

13. The Registrar, High Court of Delhi, in his letter dated 8.1.1996, submitted that the powers of Special Metropolitan Magistrates had been conferred on five Officers whose names were sent by the State Government for disposal of traffic cases on the spot, and that the High Court also proposes to set up atleast ten regular Courts of Special Metropolitan Magistrates for fresh institution of traffic cases and for this purpose, has requested the Government of the National Capital Territory of Delhi to provide suitable accommodation. So far as the State of U.P. is concerned, the situation is progressing in the reverse direction. The State had nearly 300 Special Judicial Magistrates till 28.2.1977, when they were merged with the cadre of Munisffs. At present no Special Judicial Magistrates, except Executive Magistrates upon whom the powers of Judicial Magistrates of 2nd Class or 1st Class has been conferred from time to time by the High Court under Section 13, are functioning.

14. The State of Maharashtra informed the Court by an affidavit that the State had invoked the provisions of Section 13 & Section 18 of the Code and that the Hon'ble Chief Justice and Judges had appointed within or for the local area comprised in Greater Bombay, 43 Special Metropolitan Magistrates and 75 Special Judicial Magistrates in different districts of the State.

15. The State of Nagaland informed this Court by an affidavit that it had not yet appointed Special Judicial Magistrates in terms of Section 13 of Cr.P.C. and that besides Judicial Officers, the administrative officers in the rank of Deputy Commissioner and Addl. Deputy commissioners are also exercising judicial powers for administering criminal and civil justice in various districts by virtue of their appointment in accordance with the Rules for Administration of Justice & Police in Nagaland 1937. The State further averred that other executive officers were also give powers of Judicial Magistrates, 1st Class or second class, as defined by the Code. Till the date of the affidavit, the Government was still collecting full and complete information about the number of traffic cases and those falling in Section 320 of the Code.

16. The High Court of Gujarat informed this Court that on receipt of a letter from the Government, it had considered the matter and had agreed in principle for appointment of Special Metropolitan Magistrates under Section 13 & 18 of Code. The Government has also sanctioned honorariums to be paid to the Special Metropolitan Magistrates and staff to be appointed for the said courts. The High Court had also framed Rules for the purpose. The matter was pending for creation of posts of the Special Judicial Magistrates and Special Metropolitan Magistrates and for their staff.

17. The Registrar, High Court of Madras, filed an affidavit dated 30.10.1995 stating that the High Court, in exercise of powers conferred by Sections 13 & 18 of the Code read with Section 477 (1)(d) framed the Tamil Nadu Special Judicial Magistrates and Special Metropolitan Magistrate Qualification rules, 1974 and that 122 Special Judicial Magistrates were functioning in the State.

18. Pondicherry and Andaman & Nicobar Islands are also taking steps.

19. Before we proceed further, we must deal with the constitutional validity of these two provisions. These two sections were challenged as unconstitutional before the High Court of Madras in *M. Narayanaswamy v. State of Tamil Nadu,* 1984 Cr.L.J. 1583, which declared Sections 13(1) and 18(1) to be unconstitutional inasmuch as they confined the appointments to persons holding or having held any post under the Government. In the view of the High Court, the classification was arbitrary and not based on an intelligible differential and was, therefore, violative of Article 14 of the Constitution. The High Court felt that the judicial temperament and the disposition to render expeditious justice in criminal cases cannot be the exclusive virtue of only those who hold or have held any post under the Government. Further, the High Court pointed out that a Government servant, if he had not any connection with judicial work during his employment with the Government, would be inexperienced and unfit to discharge the function as a Special Judicial Magistrate or a Special Metropolitan Magistrate. Therefore, the holding of any post under the Government, according to the High Court, does not bear any reasonable relation whatsoever with the object of the legislation. The High Court, therefore, held that the classification was not only arbitrary, but also irrational and totally unrelated to the object with which the appointments as Special Judicial Magistrate and Special Metropolitan Magistrate were to be made and powers were to be conferred upon them for discharge of their functions as such. The High Court expressed the view that Sections 13(1) and 18(1) of the Code, insofar as they confined the appointment and conferment of powers of Special Judicial Magistrates and Special Metropolitan Magistrates to any person who holds or has held any post under the Government, are arbitrary and violative of Article 14 of the Constitution of India. The rules framed to give effect to the provisions of the Code were also held to be violative of the Constitution.

20. We find it difficult to uphold this approach of the High Court because it is based on a narrow reading of the said two sub-sections. In the first place, it may be noticed that both the sub-sections confer power on the High Court to make the appointments and confer such of the powers as it deems proper from the whole bundle of powers conferrable by or under the Code on a Judicial Magistrate of the first or second class or conferrable on a Metropolitan Magistrate as the case may be. The choice of power to be conferred on the appointees under these two provisions is left to the sole discretion of the High Court. The proviso to each sub-section makes it clear that the appointee must possess such qualification and experience in relation to legal affairs as the High Court may by rules specify. Thirdly, the words "who holds or has held any post under the Government" do not necessarily exclude judicial officers belonging to the subordinate judiciary of a State/Union Territory. The sub-sections merely enable the High Court to appoint persons, other than judicial officers, who hold or have held any post under the Government and who possess the qualification and experience in relation to legal affairs as may be specified by the High Court. Parliament has taken care to leave the question of specifying the requirements for appointment to the High Court. There is, therefore, no warrant for placing a narrow construction on the words `who holds or has held any post under the Government' to confine them to appointments of Government servants, present or past only, and to exclude members belonging to the subordinate Judicial Services. Special provision in the nature of an enabling provision had to be made because without such a provision, appointment of Government servants, past or present, could not have been possible. Care has also been taken to ensure that the appointments are made of persons who have the necessary qualification and experience in relation to legal affairs which the High Court considers necessary for the exercise of power that may be conferred on the appointee. Furthermore, the duration of appointment has been restricted to one year at a time which would give the High Court an opportunity to observe the work of the appointee to enable it to decide whether or not to extend the appointment for a further period, if the workload justifies such continuance. We are, therefore, of the opinion that the High Court fell into an error in thinking that sub-sections 13(1) and 18(1) of the Code totally exclude appointment of members of the subordinate judiciary as Special Judicial Magistrates/Special Metropolitan Magistrates. We, therefore, overrule the said decision.

21. For the assistance of the Court, Shri Rajiv Dhawan made written submissions on the implementation of Sections 13 & 18 of the Code in which he traced the history of the lay magistracy in England, Canada, Italy and India and drew up a proposal for the lay magistracy in India including therein clauses for appointment, removal, training, allowances, formation of benches, clerks, power and jurisdiction. Mr. Mukul Mudgal, assisting the Court thereafter, drew up draft rules in this regard. These draft rules were circulated for comments of all the States/ Union Territories involved. Comments were submitted by the State of West Bengal and by the High Courts of Himachal Pradesh and Madras.

22. The position that now emerges is that practically every State has paid attention to the provisions of Sections 13 and 18 of the Code and necessary steps have been taken by them for giving effect to these provisions by appointing suitable number of Special Judicial Magistrates/Special Metropolitan Magistrates. They have also initiated the process of framing the rules required to give effect to these provisions of the Code. It is not necessary to go into the details of the draft rules framed by Shri Mukul Mudgal or the proposals made by Shri Rajiv Dhawan, nor is it necessary to go into the comments on these proposals. No further orders are required to be made in that behalf.

23. There can be little doubt that when the calendars of criminal courts (magistracy) in most of the States, barring a few geographically small States, are clogged and as a result, trial of cases is delayed, there is no justification for not setting a part of the machinery envisioned by the Code into motion. The basic idea in providing for the appointment of Judicial Magistrates, second class, is to ensure that petty cases do not occupy the time of the regular magisterial courts. So also the idea underlying the provision for the appointment of Special Judicial Magistrates/Special Metropolitan Magistrates under Sections 13(1) and 18(1) respectively, is to relieve the regular courts of the burden of trying those cases which could be disposed of by such Magistrates. Parliament has advisedly left the decision as to the choice of power to be conferred on such Magistrates with the High Court. Once a request is received from the Central/State Government by the High Court, the ball is entirely in the High Court, and it is the High Court and the High Court alone which has to decide on the number of appointments to be made, the choice of personnel to be entrusted with such power, and the extent of power to be conferred on such persons. It is the High Court which has to specify the qualification and/or experience that would be required for the discharging of duties by such Magistrates. As pointed out earlier, the period for which such appointments may be made must not exceed one year at a time, which shows that these are not appointments by way of regular entry into service, and are meant to be short-duration appointments to reduce the burden of pendency in regular Courts. In our view, the appointees should view the call as a social obligation and not employment; indeed as a social service to society. That is the spirit of Sections 13 and 18 and every appointee must take the call in that spirit and not expect payment as if they are in the service of the concerned State/Union Territory. That is the reason why the said two provisions expect persons who have retired or are about to retire from Government service to be appointed to help clear the pendency. Viewed from this angle it seems fairly clear to us that retired Judicial Officers, officers of the Registry of District Courts and High Courts, as well as other Government servants who have the specified experience and qualification, can be requested to accept appointments as part of social service and they may be paid a fee to meet their out-of-pocket expenses and honorarium. We are sure that the High Courts will find any number of public spirited, retired persons available to extend a helping hand to the Criminal Justice System in the country. The High Court, we must add by way of caution, must be extremely careful in the conferment of power and should do so based on the qualification and experience of each appointee.

24. Section 320 of the Code enumerates offences punishable under the Indian Penal Code which may be compounded with or without the permission of the Court. Generally speaking, the Code divides crimes into three categories, namely (i) serious crimes which cannot be compounded and must be tried (ii) crimes which can be compounded but only with the permission of the Court and (iii) crimes which can be compounded by the wrong doer and the victim. Sub-section (1) of Section 320 deals with the last mentioned category i.e. crimes which can be compounded by the concerned parties without the permission of the Court. The table immediately following sub-section (1) enumerates the compoundable offences in Column, 1, sets out the section of the Indian Penal Code which makes the act punishable in column 2, while column 3 indicates the person who may compound the same. Sub-section (2) of section 320 enumerates the offences which may be compounded with the permission of the Court before which the prosecution is pending. The table immediately following specifies the nature of the offence, the corresponding provision in the Indian Penal Code and the person who may compound the same. Sub-section (3) of Section 320 also makes the abatement of such offence or the attempt to commit such offence compoundable. In the case of a minor, an idiot, or a lunatic, any person competent to contract on his behalf is held by sub-section (4) to be competent to compound the offence. So also in case the person competent to compound is dead, sub-section (5) permits his legal representative to compound the offence.

25. We may also refer to Section 206 of the Code which provides a special procedure for petty offences to be tried summarily. It further provides that the Magistrate may issue summons to the accused, requiring him to appear in person or through his lawyer, or if he desires to plead guilty, to transmit by post or messenger, his plea of guilt along with the fine specified in the summons. So also Chapter XXI comprising Sections 260 to 265 provides for Summary Trials. We have mentioned these provisions illustratively, merely to point out the category of cases under the Indian Penal Code which could be considered to be disposed of through the instrumentality of the Special Judicial Magistrates/Special Metropolitan Magistrates, the power being conferred on them in a phased manner depending on the experience gained on their working.

26. In the past, in certain States, large numbers of such petty cases were withdrawn with a view towards reducing the burden on the regular courts. We are of the opinion that unless a machinery is set up to ensure that such cases will not pile up once again after the system is put on an even keel by the withdrawal of such cases, such a measure will not serve any purpose but will, instead, send a wrong signal to the offenders that they can commit such infractions with impunity as nothing will happen to them, and ultimately the cases would be withdrawn. That will bring about more indiscipline in society rather than create a culture of discipline which is so vital for national growth. But, if an adequate machinery of the type envisioned by Sections 13 and 18 of the Code is placed in position to ensure that cases do not pile up in future and then the cases are withdrawn with a view to placing the system on an even keel, it will achieve the desired objective to bring about discipline in society and eradicate crime. That is because the wrong-doer will know that he will be immediately hauled up before a Magistrate and would be punished if found guilty. If the load of such petty crimes is taken out of the regular courts, those courts would have time to deal with more serious crimes rather than have their time consumed by such petty cases. Besides, petty cases would also be disposed of with speed if sufficient number of Second Class Magistrates and Special Judicial/Special Metropolitan Magistrates are appointed. With such a huge pendency, it is difficult to understand the indifference in utilising this machinery envisioned by the Code. The decision to invoke these provisions was taken in 1993 at the Conference of Chief Ministers and Chief Justices which was presided over by the Prime Minister and was attended by the Chief Justice of India and yet there was almost halting progress. Even today the machinery has not been set up in some States, and where it has been set up, it is not in full strength as the status position indicated State-wise earlier would show. We, therefore, give the following directions:

(1) The notices against the States of Nagaland, Mizoram, Jammu and Kashmir and Sikkim and the Union Territories of Daman, Diu and Dadra Nagar Haveli are hereby discharged.

(2) Out of the remaining States, those who have not addressed letters of request to their High Courts for appointment of Special Judicial Magistrates/Special Metropolitan Magistrates, are directed to do so within a month's time so that petty cases may be dealt with by them relieving the regular Judicial Magistrates/ Metropolitan Magistrate of such petty cases to enable them to deal with more serious cases.

(3) The High Courts of all such States, on receipt of the letter of request, shall determine the total number of such Special Magistrates required to deal with the pendency of petty cases and taken immediate steps to appoint them.

(4) In cases where the High Court has already received such a letter and has initiated action to appoint such Special Magistrates, it will, within one month, determine the total number of such Special Magistrates needed to dispose of the pendency of petty cases and ensure appointments at an early date, and

(5) The High Courts will also ensure that after the regular Magistrates are relieved of petty cases, they would dispose of a larger number of more serious cases so that the offenders are brought to book at an early date and the innocent are not unncessarily vexed for long spells.

27. With these directions we terminate both the proceedings. We direct each of the Respondent States covered by direction No. 2 to pay a sum of Rs. 10,000/- each to the Supreme Court Legal Aid Committee by way of costs. Both the Writ Petitions are disposed of accordingly.

SCALE (PIL) 1981-97 1030

SHRI DINESH TRIVEDI, M.P. & ORS. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, CJI. AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — CONSTITUTION — ARTICLE 32 — Vohra Committee Report — Court recommends that a high level committee be appointed by the President of India on the advice of the Prime Minister, and after consultation with the Speaker of the Lok Sabha. The Committee shall monitor investigations involving the kind of nexus referred to in the Vohra Committee Report and carry out the objectives described earlier.

Referred: State of U.P. vs Raj Narain, (1975) 4 SCC 428; S.P.Gupta vs Union of India, 1981 SCC Supp. 87 = 1981(4) SCALE 1974; Balaji Raghavan vs Union of India, (1996) 1 SCC 361 = 1995(7) SCALE 202).

Ahmadi, CJI.— Democracy in modern India is on the threshold of completing fifty years of existence. Milestones such as this have traditionally been occasions to embark upon wide-ranging assessments to survey the achievements and failures, highpoints and pitfalls, as well as the future prospects of the institution concerned. In our times, it is widely acknowledged that democracy in India has not risen upto the high expectations which heralded its conception. Many reasons have been advanced to explain the causes for the malaise which seems to have stricken Indian democracy in particular, and Indian society in general. The matter which we are presently concerned with professes to identify one of the primary causes for the present state of affairs.

2. The genesis of the controversy relates to the constitution of Committee by the Union of India on July 9, 1993, by its order No. S/7937/SS(ISP)/93. An examination of the brief order discloses that the Committee was to be chaired by the Home Secretary and was to

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Judgment dated March 20, 1997 in W.P. (C) No. 664 of 1995 [1997(3) SCALE 117] comprise the Secretary (Revenue), the Director of the Intelligence Bureau (IB), the Director of the Central Bureau of Intelligence (CBI), and the Joint Secretary (PP), Ministry of Home Affairs. Later, the Special Secretary (Internal Security and Police) was also included as a member. The erstwhile Home Secretary being Shri N.N. Vohra, the Committee came to be popularly described as the "Vohra Committee". The order further reveals that the Committee was set up "to take urgent stock of all available information about the activities and links of all Mafia organisations/elements, to enable further action". Based on the findings of the Committee, the Union Government would then determine whether there was a need "to establish a special organ/agency to regularly collect information and pursue cases against such mafia elements". To this end, the Committee was declared to be competent to "invite senior officers of various concerned departments (Customs, Revenue, Intelligence, etc.) to gather the required information". The Committee was also required to submit its report within three months.

3. The Report of the Vohra Committee, authored by its Chairman and containing only his signature, was submitted on October 5, 1993. The Report is essentially a compilation of the responses of its different members and includes the reports of the Secretary, Research & Analysis Wing (RAW), the Director, CBI, the Director, IB, and the views of the Secretary (Revenue). In the main Report, these various reports have been analysed and it is noted that the growth and spread of crime syndicates in Indian society has been pervasive. It is further observed that these criminal elements have developed an extensive network of contacts with bureaucrats, government functionaries at lower levels, politicians, media personalities, strategically located persons in the non-Governmental sector and members of the judiciary; some of these criminal syndicates have international links, sometimes with foreign intelligence agencies. The Report recommended that an efficient Nodal Cell be set up with powers to take stringent action against crime syndicates, while ensuring that it would be immune from being exploited or influenced. However, no follow-up action on the findings of the Vohra Committee Report seems to have been initiated over the two years which immediately followed its submission.

4. During July 1995, a young political activist named Naina Sahni was murdered and one of the persons arrested happened to be an active politician who had held important political positions. Newspaper reports published a series of articles on the criminalisation of politics within the country, and the growing links between political leaders and mafia members. The attention of the masses was drawn towards the existence of the Vohra Committee Report. It was suspected that the contents of the Report were such that the Union Government was reluctant to make it public. As a consequence of the resulting controversy, the Union Government agreed to place the Report before Parliament. On August 1, 1995, the Report of the Vohra Committee was tabled in Parliament, where it became the subject of a prolonged, intense debate.

5. Shri Dinesh Trivedi, M.P. (Rajya Sabha), who is the first petitioner in W.P. (Civil) No. 664 of 1995, actively participated in the debates in Parliament. On August 16, 1995, he made a written representation to the erstwhile Minister for Home Affairs demanding that the Union Government make public the reports which were the basis for the Vohra Committee Report, and that the names of individuals who would become identifiable as a result of studying the various background papers, be released. He also alleged that the Union Government was trying

to suppress these background reports and, without them, the Vohra Committee Report was "baseless".

6. Being unsuccessful in securing a satisfactory response to his representation, Shri Dinesh Trivedi, in conjunction with the Public Interest Legal Support and Research Centre (PILSARC) and the Consumer Education and Research Centre (CERC), both of which are non-governmental organisations, filed the present writ petition in public interest. The following were included as respondents: the Union of India, the Ministry of Finance, the Director, RAW, the Director, CBI, the Director, IB, and the special Secretary to the Ministry of Home Affairs.

7. These petitioners allege that a cursory analysis of the Report reveals the following disturbing aspects : (1) several governmental agencies have, in their written reports, indicated that they are aware of the vast local, national and international links of criminal syndicates; (2) these links are such that they amount to a parallel system of government; (3) the common citizen is unprotected and must live in constant fear of his life and property; (4) even the members of the judicial system have not escaped the embrace of the mafia; and (5) the existing criminal justice system is unable to deal with the activities of the mafia.

8. The petitioners state that since the Report reveals such alarming trends, it is of the utmost importance that it be made the subject of considerable scrutiny. They allege that the document tabled in the Parliament is not the complete report but betrays an incomplete substitute prepared hurriedly for the purpose of meeting the demand in Parliament and suppresses vital information regarding the unholy connections between politicians, bureaucrats, criminals and anti-social elements. They base this assertion on the statement made in the Lok Sabha, a day prior to the publication of the Report, by the erstwhile Minister for Parliamentary Affairs that the Report extended to about 100 pages, and the fact that the document placed before the House numbered only 11.5 pages. In this respect, the petitioners have also pointed out that the Report, as it was tabled in Parliament, is not in the form of continuous paragraphs; on the contrary, after reaching paragraph 3.7, the next recorded paragraph is numbered, as paragraph 6.1. The petitioners further state that the Report is itself based on a number of reports that had been placed before it and, without this supporting material, the Report is incomplete. Thus the genuineness of the Report was shrouded in suspension.

9. The petitioners aver that the people at large have a right to know about the full investigatory details of the Report. Such disclosure is stated to be essential for the maintenance of democracy and for ensuring that transparency in government is secured and preserved. Towards this end, the petitioners have urged us to direct the Union Government to make public the annexures, memorials and the written evidence that were placed before the Committee. A direction to the Union Government to reveal the names of all bureaucrats, police officials, Parliamentarians and judicial personnel against whom there is tangible evidence, to enable action to be taken in accordance with law, is also being sought. We are also asked to direct the Union Government to present to us an effective package of the follow-up measures taken or that are proposed to be taken with regard to the Report. Lastly, a declaration to the effect that Section 5 of the Official Secrets Act, 1923 is over-broad, unreasonable and unconstitutional and ought to be supplanted by the formulation of a Freedom of Information Policy, is also sought.

10. On October 13, 1996, a Division Bench of this Court, while admitting the present writ petition, issued notice to the

Union of India and directed that an authenticated version of the Report of the Vohra Committee be placed before it; the Union of India was also required to apprise the Court of the follow-up measures initiated pursuant to the Report.

11. The case for the Union of India has been made out in a sworn affidavit filed by Shri K. Padmanabhaiah, the Home Secretary in the Ministry of Home Affairs and the successor-in-office of Shri N.N. Vohra. In the affidavit, one of the annexures to which is an authenticated copy of the Report, the Home Secretary has stated that the copy of the Report which was tabled in Parliament was the genuine and authentic document. One of the other annexures to the affidavit is a copy of the correspondence upon this aspect between Shri N.N. Vohra, the author of the Report and the present Home Secretary. In his response, Shri N.N. Vohra clarifies that though he had access to the reports, notes and letters furnished by the Director, IB, Secretary (Revenue) and the Director, CBI, while making his final Report, he did not consider it fit to include them as annexures for the Report was meant to be a summary of discussions held and of the contents of the documents which were already on record. As for the incorrect numbering of the paragraphs, Shri Vohra explained that it arose as a result of a typographical error committed by his stenographer and his own omission to detect and correct the error.

12. While apprising the Court of the follow-up measures initiated pursuant to the Vohra Committee Report, the Home Secretary, in his affidavit, stated that the Vohra Committee was set up with a view to facilitating the establishment of a nodal agency to supervise and coordinate the functioning of enforcement and intelligence agencies towards controlling the crime syndicates existing in the country. After the Report was placed in Parliament on August 1, 1995, and as a result of the views expressed by the Members of Parliament during the debates, the Union Government set up a Nodal Agency on August 2, 1995, in conformity with the recommendation of the Vohra Committee Report and was to be chaired by the Home Secretary. The Committee also comprises the Secretary (Revenue), the Director, IB, the Director, CBI and the Secretary (Revenue), the Director, IB, the Director, CBI and the Secretary (RAW). This Nodal Agency was assigned the task of coordinating, directing and supervising the activities of the Central and State investigative agencies responsible for controlling the growth of crime syndicates without purporting to be a substitute for them. Thereafter, the Nodal Agency met and considered issues of inter-agency cooperation and support. At the first meeting of the Nodal Agency, it was decided to hold a discussion with the leaders of different political parties with a view to evolving a Code of Conduct for politicians and bureaucrats which would help expose the links developed by the mafia syndicates. In this regard, an All Party Meeting was convened by the erstwhile Home Minister on September 15, 1995 which was attended by Parliamentarians representing the major political parties. From the minutes of this meeting, it appears that several issues of grave importance relating to the findings of the Vohra Committee Report were discussed at length. On January 5, 1996, the Union Government issued a further order appointing the Cabinet Secretary as the Chairman of the Nodal Group, while retaining the Home Secretary and all the other Members in the Nodal Agency.

13. The affidavit further points out that under our constitutional scheme, the maintenance of law and order is essentially the responsibility of the State Governments. The role of Central Intelligence Agencies, such as the CBI, the IB and of the Revenue

Department is, therefore, limited to only about 5% of the total number of criminal cases, consisting of cases transferred by the State Governments to the CBI, cases in Union Territories, and the cases being investigated by Central Revenue Agencies. Much of the investigatory work in the country falls within the purview of CID and Intelligence Agencies within State Governments. The task of the Nodal Group is, therefore, limited to ensuring that the investigative efforts of all these separate agencies are synchronized towards their smooth functioning.

14. During the hearing of this matter, we asked the learned counsel appearing for the parties before us to put forth their suggestions in respect of the options open to this Court. Shri Ram Jethmalani, learned senior counsel appearing for the petitioners contended that the plea of the Home Secretary that 95% of crimes are within the purview of State Governments is an attempt to dilute the findings of the Vohra Committee Report. He averred that the Vohra Committee Report essentially addresses itself to those cases which fall, not within the Entry of "Public Order", but, instead, with those cases involving narco-terrorist elements and smuggling of arms and ammunitions into the country, which are properly and wholly within the domain of the executive power of the Union. Shri Jethmalani urged us to direct that the details of the reports and events mentioned in the Vohra Committee Report be fully and completely disclosed. In his view, setting up a Nodal Agency would serve no purpose for it would be as prone to failure as the agencies it sought to supervise had proven themselves to be. Instead, he urged us to set up a Committee consisting of two retired Judges of the Supreme Court with sufficient experience of criminal matters, to probe into the disclosures that would be made consequent to our directions; further legal action could be pursued by this Court once such a Committee had submitted its complete report. A similar suggestion, which has been canvassed before us, is for the establishment of a Special Authority, headed by a retired Supreme Court Judge, to get matters involving the aforesaid nexus to be investigated by an independent agency which would be empowered to exercise all the statutory powers of investigation under the Code of Criminal Procedure. Such a Special Authority would be able to launch prosecutions against politicians, bureaucrats, police officers and criminals on the basis of evidence collected in the investigations, for offences under the Indian Penal Code and other penal laws under the Prevention of Corruption Act. Thereafter, it was suggested, Special Courts could be designated to expeditiously try all such cases.

15. We may first deal with the assertion based on the petitioners' right to freedom of information. It has been contended before us that the citizens of India have a right to be informed not only of the contents of the report, but also of the details of the various reports, notes, letters and other forms of written evidence that was placed for the consideration of the Vohra Committee.

16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute. This Court has had many an opportunity to express itself upon this issue. In the case of *State of U.P. v. Raj Narain*, (1975) 4 SCC 428, Mathew, J. eloquently expressed this proposition in the following words :

> "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct,

there can be but few secrets. *The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.* They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, *though not absolute,* is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, *have no repercussion on public security.* To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

(Emphasis added)

17. Implicit in this assertion is the proposition that in transactions which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.

18. The case of *S.P. Gupta v. Union of India,* 1981 SCC Supp. 87, decided by a seven-Judge Constitution Bench of this Court, is generally considered as having broken new ground and having added a fresh, liberal dimension to the need for increased disclosure in matters relating to public affairs. In that case, the consensus that emerged amongst the Judges was that in regard to the functioning of government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. The Court held that the disclosure of documents relating to the affairs of State involves two completing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State to protect the information relating to its crucial affairs. It was further held that, in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make his final decision depending upon the particular facts involved in each individual case. It is important to note that it was conceded that there are certain classes of documents which are necessarily required to be protected, e.g. Cabinet Minutes, documents concerning the national safety, documents which affect diplomatic relations or relate to some State secrets of the highest importance, and the like in respect of which the Court would ordinarily uphold Government's claim of privilege. However, even these documents have to be tested against the basic guiding principle which is that *wherever it is clearly contrary to the public interest for a document to be disclosed, then it is in law immune from disclosure.* (Paras 73 and 74 at pp. 284-286).

19. What then is the test? To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers in Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.

20. This then is the test which we must now apply to the facts of the present case. Having examined the copy of the Report which has been placed before us, the allegations regarding its authenticity, the explanation forwarded in this behalf by the Home Secretary and the copy of the communication with Shri N.N. Vohra in this respect, we find that there is nothing on record to raise a doubt that the Report, as tabled in Parliament and as presented to us, is not genuine, authentic and unabridged. We are of the view that the erstwhile Minister of Parliamentary Affairs, in making the statement that the Report was 100 pages long, may have been either misinformed or misled. That apart, there is no other ground for doubting the genuineness of the Report. Since it has been tabled in Parliament, it now enjoys the status of a public document. We will, however, have to consider whether the supporting material placed before the Vohra Committee can be disclosed for the benefit of the general public.

21. The supporting material consists of reports, notes and letters furnished by the other members of the Vohra Committee to its Chairman who made them the basis of his report. Before taking a decision on this aspect, we must record the perceptions of the author of the Report as to the manner in which it was to be treated. We have already noted Shri Vohra's statement that he had conceived of his Report to serve only as a summary of the discussions and reports before the Committee. In addition, the following paragraphs extracted from the concluding portion of the Report are also relevant for this purpose:

> "15.1 In the normal course, this Report would have been drafted by the Member Secretary and finalised by the Committee. *Considering the nature of the issues involved, I did not consider it desirable to burden the Members of the Committee with any further involvement beyond the views expressed by them.* Accordingly, I decided to personally dictate this Report. (Note that the Report is not signed by the other Committee-members.)
>
> 15.2 *I have prepared only three copies of this Report.* One copy each is being submitted to MOS (IS) and HM, the third copy being retained by me. After HM has perused this Report, I request him to consider discussing further action with Finance Minister, MOS (IS) and myself. The emerging approach could thereafter be got approved from Prime Minister before being implemented. *At that stage other concerned officers would be taken into confidence.*"
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> (Emphasis and comments added)

22. It is, therefore, evident that Shri N.N. Vohra had himself drafted and signed the Report in the belief that it would be read by a select few high-ranking officials who would then take necessary action. It is doubtful whether the candour exhibited and the liberal mentioning of intelligence reports would have been forthcoming if he had not felt assured of complete confidentiality. Indeed, much of the information contained in the Report, which has now become publicly available, might well have adversely affected the various intelligence agencies involved.

23. We are reluctant to direct the disclosure of the supporting material which consists of information gathered from the Heads of the various Intelligence Agencies to the general public. To so direct would cause great harm to the agencies involved and to the conditions of assured secrecy and confidentiality under which they function. Furthermore, it must be noted that not all of the information collected and recorded in intelligence reports is substantiated by hard evidence. Often on the basis of unverified suspicion names are thrown by people to save their own skins. Intelligence Agents are not obliged to adhere to the principles of natural justice before they compile reports of possible suspects; quite frequently, individuals are shortlisted based purely on the investigators' hunches and surmises or on account of the past background of the suspects. The disclosure of these reports would lead to a situation where public servants and elected representatives who, though entirely innocent, are compelled by virtue of their offices to associate with individuals whose culpability is beyond doubt, will also find themselves mired in suspicion. Such a situation would, in the long run, prove to be disastrous for the effective functioning of government. This is because it would make every governmental functionary over-cautious about taking the simplest of decisions.

24. We may now cite an illustration to give shape to the afore-mentioned apprehension. In the entire Report, apart from the reference to mafia gangs of Bombay, only one person has been specifically named as being a prominent beneficiary of the nexus which is the focus of the Report. The individual concerned is a certain Iqbal Mirchi whose name is mentioned as having been disclosed by the Director, CBI. Shri Jethmalani has objected to this lone disclosure by stating that when the government sought to pursue extradition proceedings against Iqbal Mirchi in London, it could not produce even "an iota of evidence" against him. We think that this assertion by the learned Senior Counsel for the petitioners themselves adds great support to our apprehension that the full scale disclosure of these Intelligence reports will, in the absence of properly conducted inquiries, lead to the harassment and victimisation of individuals who might well be entirely innocent of any blame.

25. Alternatively, such full scale disclosures would undoubtedly act to the advantage of those individuals who are actually the central figures in the nexus mentioned in the Report. Warned in advance of their complicity being suspected, they would initiate rearguard measures to exonerate themselves.

26. We are, therefore, of the view that the disclosure of the supporting material placed before the Vohra Committee to the public at large would, instead of aiding the interest of the public, be severely and detrimentally injurious to it. In that view of the matter, we think there is no necessity for us to express ourselves on the constitutionality of Section 5 of the Official Secrets Act, 1923.

27. We may now turn our focus to the Report and the follow-up measures that need to be implemented. The Report reveals several alarming and deeply disturbing trends that are prevalent in our present society. For some time now, it has been generally perceived that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse affects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the President of our country felt constrained to make references to the phenomenon in his Addresses to the Nation on the eve of the Republic Day in 1996 as well as in 1997. The matter is, therefore, one that needs to be handled with extreme care and circumspection.

28. The Report, while recording the widespread development of crime syndicates within the country, points out that under the existing system, there is no provision by which the various intelligence agencies can coordinate with each other in properly utilising the information relating to the links developed by crime syndicates which comes their way. Sharing of such information is rare, and much of it is discarded without being put to any productive use. The Report, therefore, recommended the setting up of a Nodal Agency to which all existing intelligence and enforcement agencies (irrespective of the Department under which they are located) shall promptly pass on any information relating to crime syndicates which they may come across. The Report also contains recommendations as to the manner in which the Nodal Agency should be set up while simultaneously emphasising the need for ensuring that the information available with the Nodal set-up is used strictly and purely for taking stringent action against the crime syndicates, without offering any scope whatsoever of its being exploited for political gain. The need for complete confidentiality was also emphasised.

29. The nodal Agency set-up by the Union Government pursuant to the Debates in Parliament upon the Report, conforms to the recommendations contained in the Report. Later, presumably to add greater weight to the body, the Cabinet Secretary was included in the Nodal Agency as its Chairman. However, as we have already noted, the Nodal Agency suffers from certain limitations. Being only a supervisory body, without having clearly delineated powers, it cannot effectively control the pace and thrust of investigative efforts.

30. We are of the view that the grave nature of the issue demands deft handling by an all-powerful body which will have the means and the power to fully secure its foundational ends. The Nodal Agency, in its present form, comprises senior bureaucrats of the highest level. While it is suited to coordinate an exchange of information between different investigating agencies, its composition is such that it may not be viewed by the public as completely independent or immune from pressures of every kind. It is, therefore, not suitable for pursuing an investigation of this kind and taking it to the stage of prosecution where there may be nexus between the persons under investigation and powerful persons such as those referred to in the Vohra Committee Report. In view of the seriousness of the charges involved and the clout wielded by those who are likely to become the focus of investigation, it is necessary that the body which is entrusted with the task of following the investigation through to the stage of prosecution, be such that it is capable of enjoying the complete trust and confidence of the people. Moreover, in view of the suspicion that those involved may well be individuals who occupy, or have occupied, high positions in Government, it is necessary that the body be able to obtain the sanctions which are necessarily required before any prosecutions can be launched. In the case of public servants, sanctions are required, for instance, under Section 197 of the Code of Criminal Procedure and under Section 6 of the Prevention of Corruption Act, 1947. The Nodal Agency, in its present form, may not command the confidence of the people in this regard; this is a serious handicap for, in such matters, people's confidence is of the essence. An institution like the Ombudsman or a Lokpal, properly set up, could command such confidence and respect.

31. We are, therefore, of the view that the matter needs to be addressed by a body which can function with the highest degree of independence, being completely free from every conceivable influence and pressure. Such a body must possess the necessary powers to be able to direct investigation of all charges thoroughly before it decides, if at all, to launch prosecutions. To this end the facilities and services of trained investigators with distinguished records and impeccable credentials must be made available to it. The

Report, the supporting material upon which it is based and the unequivocal assistance of all existing intelligence agencies must be forwarded to this body. In time if the need is so felt, the body may even consider the feasibility of designating Special Courts to try those who are identified by it, which proposal may then be considered by the Union Government. To this end, and in the absence of any existing suitable institution or till its creation, we recommend that a high level committee be appointed by the President of India on the advice or the Prime Minister, and after consultation with the Speaker of the Lok Sabha. The Committee shall monitor investigations involving the kind of nexus referred to in the Vohra Committee Report and carry out the objectives described earlier.

32. Such a direction by us would not be without precedent. In *Balaji Raghavan v. Union of India,* (1996) 1 SCC 361, a Constitution Bench of this Court had recommended the establishment of a high level Committee to examine the guidelines relating to the conferment of the National Awards i.e. the Bharat Ratna and the Padma Awards. (See paragraph 33 of the judgment of Ahmadi, CJI speaking for the majority).

33. We dispose of the Writ Petition in the above terms with no order as to costs.

SCALE (PIL) 1981-97 1039

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — RIDGE AND OTHER AREAS OF DELHI — Implementation of the orders of this Court — Court issues further directions.

Item A

Mahila Ashram and Arya Gurukul

1. We have heard learned counsel appearing for Mahila Ashram and Arya Gurukul. The area suggested by Sibal Committee and also by Mr. Khanduri can easily be separated and taken away from the main area. We, therefore, direct that the approach road which covers an area of 650 sq. yds. adjoining the Ashram should be closed and the area be added to the Ridge. This may be done within two months.

Item B

Sacha Ashram Sauda Gurdwara

2. Mr. Balbir Singh, the occupant of the Gurdwara is present before us. He states that he can shift Guru Granth Sahib to the main Gurdwara which is about 150 yds. away from this encroached land immediately. He further states that he is also using the place for his residence. He needs reasonable time to vacate the place. According to him, his two children have to appear in the examinations in the month of March and he should be given time upto the end of March. We agree with him. We direct that he should immediately shift Guru Granth Sahib to the adjoining Gurdwara and he himself shall vacate the premises and hand over vacant land to the Ridge Management Board on April 2, 1997. We direct the Ridge Management Board through Mr. Khanduri to take over the possession on

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Order dated October, 30, 1996 in I.A. No. 18, 22 & 32 in W.P. (C) No. 1677 of 1985 [1997(3) SCALE (SP) 1]

April 2, 1997 and do the necessary fencing and aforestation on the area.

Item C

Ram Tirath Temple and another Temple (Vaishno Devi Temple) at Rajinder Nagar

3. Learned counsel appearing for the Ram Tirath Temple and the other temple states that construction has not been done because litigation is pending in the courts. According to Khanduri report, the so called temple is without any roof and the adjoining temple has only asbestos sheets and there are no walls. We direct the Ridge Management Board through Mr. Khanduri to take over possession of the premises from the management of the temples. Learned counsel for the temple wants two months time. We give three months time to the learned counsel to vacate the premises. He shall do so before January 31, 1997.

Item D

Baba Asa Ramji

4. Mr. R.S. Suri, learned counsel states that he would have another round of discussion with Mr. Khanduri and Mr. Ranjit Kumar to ascertain as to how much area is to be left with the Management. We make it clear that the approach roads etc. which are being used by the temple shall have to be closed permanently. This matter may also be taken into consideration while holding the discussions. This may be done within one week. We further make it clear that no vehicle shall be permitted to enter the Ridge area.

5. Ridge matter to be listed on 8.11.1996.

I.A. No. 22

Item E of the Office Report

6. Pursuant to this Court's order dated October 24, 1996, Sh. Ganga Das, (IAS), Principal Secretary and Commissioner (Industries), Govt. of NCT of Delhi has filed an affidavit dated October 30, 1996. In Para 3 of the affidavit it is stated that 102 acres of land is already available as per detail given in the said para with the Government of Delhi. This 102 acres of land is available in Narela Indl. Estate, Jhilmil Indl. Area, Badli Indl. Estate, Okhla Indl. Estate, Jhilmil Tahirpur, and Patparganj Industrial Estate. This land is already developed and can be utilised for construction of flatted factories immediately. Mr. Swaraj Kaushal, learned counsel for the NCT, Delhi Admn. states that near about 5000 industries can be accommodated in 102 acres already available with the Government of Delhi. We direct the Delhi Administration to invite applications confined to the industries which are to be relocated for allotment of flats/plots in the above mentioned 102 acres. It is entirely for the Delhi Administration to lay down the policy and the scheme regarding inviting applications and allotment of flats to the intending purchaser. The advertisement inviting applications shall be issued by the Government within one month from today.

7. Para 5 of the affidavit further states that 4800 acres of land is available in villages mentioned at Sl. No. 1 to 7 in the said paragraph;

1. Alipur, Kherakhurd, Naya Bans, Khera Kalan, Jindpur.
2. Holambi Khurd, Holaumbi Kalan, Khera Khurd, Naya Bans.
3. Bawana
4. Kanjawala, Sultanpur Majra
5. Kanjawala and Chandpur
6. Tikri Kalan
7. Tikri Kalan

8. Mr. Omesh Saighal, Member Secretary, National Capital Region Planning Board states that 4800 acres is a very large area and in fact may not be required for the development of the industrial estates. He further states that the areas which are not within the proposed urban extension limits may not be permitted to be used as at present for industrial purposes. We shall consider this suggestion at a later stage. As at present we only direct that the acquisition proceedings in respect of the three villages at Sl. Nos. 1, 2 and 3 in para 5 of the affidavit (mentioned above) may be initiated with immediate effect. The necessary notification etc. may be issued and possession taken within one month from today.

9. We further direct that the NCT, Delhi Admn. shall issue a public notice in three daily newspapers (English and Vernacular) on three consecutive days asking the industrial operating in residential/non-conforming area to apply for allotment of plots to the authority mentioned in the advertisement. It shall further be stated in the advertisement that the industries shall also be required to give undertaking that on allotment of the plot they shall shift from the present place to the industrial estate where the plot/flat is allotted. The allotment procedure regarding the land to be acquired may also be devised by the NCT, Delhi Admn. in similar manner as it is going to devise for 102 acres of land. We made it clear that plots/flats shall only be offered to the industries which are to be relocated from the residential/non-conforming areas of Delhi and not to the new units. Meanwhile, the NCR Board may give its response to the scheme proposed by the Delhi Admn.

10. To come up on 28.11.1996.

I.A. No. 32

Item F

11. Adjourn to 21.11.96 to enable Mr. Mehta and Mr. Ranjit Kumar to study the NEERI Report and the affidavit filed by the Ministry of Water Resources and assist this Court.

12. Matter regarding H(a) and H(b) categories (822 industries which are subject matter of order dated 6.9.96) shall be listed on 19.11.1996.

SCALE (PIL) 1981-97 1041

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — TAJ MAHAL — Notification regarding construction within 200 mts of a protected monument is prohibited — Court issues consequential directions regarding Mathura Refinery, brick kiln operators and other constructions within 200 m. of Taj Mahal.

W.P. (C) 13381/84

OFFICE REPORT

Item A.

1. Pursuant to this Court's order dated Oct. 24, 96 the concerned officers are present in Court. Mr. K.N. Bhatt, Addl. Solicitor General appearing for the Union of India and for the Planning Commission states that the matter is likely to be discussed between the Planning Commission & the Union of India. He seeks short adjournment.

2. To come up on 18th Nov. 96.

Item B.

3. Pursuant to this Court's order dated October 8, '96 Mr. J.L. Raina, Executive Director, Mathura Refinery has filed an affidavit dated October 29, 96. Operative part of the affidavit is as under:

> "...... That after visiting various sites a plot of land admeasuring about 5 acres bearing Khasra No. 170 at Village Navada on the National Highway No. 2

Order dated October 29, 1996 in W.P. (C) No. 13381/84 [1997(3) SCALE (SP) 3]

> about 3 Kms. from the Refinery Township towards Delhi on the outskirts of Mathura Town was found to be suitable and has, therefore been selected for the setting up of the Hospital. This site was selected in consultation with the District Administration. The title verification and other formalities are being carried out. The owners of the said land have also expressed their willingness to sell the said land to the IOC. The District Administration has assured full cooperation in getting the said land transferred in favour of the IOC as early as possible. As things stand today, the said land is expected to be transferred to IOC by the end of November, 1996. In case the Refinery faces any problem in acquiring the said land it will approach this Hon'ble Court for appropriate directions and relief.
>
> It may further be mentioned that M/s Hospital Services Consultancy Corporation (India) Ltd., a Government of India Enterprise has been awarded the job of preparing the project report. The Mathura Refinery is taking all appropriate steps to complete the project in the shortest possible time. ....."

4. Mr. Reddy, Addl. Solicitor General appearing for the Oil Corporation Ltd. states that a short affidavit indicating the time schedule within which the 50 bed hospital is to be constructed and commissioned shall be filed in this Court within three weeks.

5. To come on 18th Nov., 96.

Item C.

6. Mr. Sehgal, Ld. Counsel for the State of U.P. States that the matter of rehabilitation of the brick kiln operators is under consideration of the Govt. He states that four departments are involved and the matter is being examined. So far as the utilisation of fly ash is concerned Mr. Sehgal states that an affidavit shall be filed within two weeks.

7. Adjourned for 18th Nov., 96 at 2 P.M.

Item D.

8. Pursuant to this Court order dated 10th April, 96 Mr. Sehgal appearing for the State of U.P. states that the construction of by-pass is ahead of schedule. We appreciate the statement made on behalf of the State of U.P.

9. To come up on 16th Dec., 96.

10. This Court on August 7, '96 passed the following order:

> ".....Mr. M.C. Mehta on April 15, 1996 placed on record Notification No. So 1764 dt. June 16, 1972 which was issued under Rule 32 of the Ancient Monuments & Archaeological Sites and Remains Rules, 1959 whereunder construction within 200 m. of a protected monument is prohibited. By the order dt. April 15, 1996, we stayed all construction within 200 m. of Taj Mahal. One of the constructions which is being done within the 200 m. of Taj Mahal is a Police Station. There may be some other encroachers occupying this area. We direct that all those who are occupying any part of land within 200 m. of Taj Mahal shall be removed from that area, by force, if necessary within three months from today. We direct the police authorities to demolish all the construction made by them within 200 m. of Taj Mahal. We direct the District Magistrate/Collector and the Supdt. of Police of Agra to have this area vacated and hand it over to the Archaeological Survey of India. We are informed that within the area of 200 m. there is an ancient mosque. The mosque which has a boundary area, shall not be touched. Any construction within the boundary wall of the mosque shall also not to be touched. ...."

Agra Cantt Constituency, U.P. is personally present in the Court. He states that there are large number of constructions including religious constructions within 200 mts. area of Taj Mahal. According to him most of the construction area is not illegal and the occupants are not encroachers. Mr. Agarwal, Counsel appearing for some of the residents and occupants has also supported Mr. Mehta.

11. Mr. Sehgal, Ld. Counsel for the State of U.P. states that the constructions which were made after 16th June, 92 are in the process of demolition. He further states that so far as other constructions are concerned the matter is being examined by the U.P. Govt. and necessary applications, if necessary, shall be moved in this Court for appropriate orders.

SCALE (PIL) 1981-97 1043
TARALA V. PATEL & ORS. *Petitioners*
VS
UNION TERRITORY OF PONDICHEERY *Respondents*

CORAM: KULDIP SINGH, S.B. MAJMUDAR AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — PONDICHERRY DISTILLERY — Pondicherry Government files an affidavit stating that the Distillery will be relocated — Court orders that the said Distillery shall not operate from the present site beyond April 30, 1997 irrespective of the fact whether the new Distillery has started functioning or not.

1. Mr. Maria Susai, Deputy Director of Industries, has filed an affidavit on behalf of the Pondicheery Government. It is stated that the Pondicheery Distillery shall be relocated and shifted from the present site within a year or so from today. We have heard Mr. Harish N Salve, learned counsel for the Pondicheery Government. We direct that the Pondicheery Distillery shall not operate on the present site beyond April 30, 1997. This Distillery shall stop all functions at the present site on that date irrespective of the fact whether the new Distillery has started functioning or not. The Writ Petition is disposed of.

2. Further directions, if any, may be obtained by the Pondicheery Government from the High Court. We, however, make it clear that time granted by us shall not be extended beyond April 30, 1997.

Order dated September 13, 1997 in W.P. (C) No. 184/96. [1997(3) SCALE (SP) 5]

SCALE (PIL) 1981-97 1043
M.C. MEHTA *Petitioner*
VS
UNION OF INDIA AND ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — SEWAGE TREATMENT PLANTS — Construction of Sewage Treatment Plants in Uttar Pradesh, Bihar and West Bengal in respect of cities situated in the bank of river Ganga — Directions given.

Order dated October 29, 1996 in W.P. (C) No. 3727/85 [1997(3) SCALE (SP) 5]

W.P. (C) No. 3727, 4677/85, 327/90 & 725/94

1. The total fine amount collected from time to time may be deposited in a Bank as fixed deposit for a further period of 30 days. Meanwhile we have requested Ld. Attorney General and also Mr. M.C. Mehta to examine as to how this money is to be utilised.

2. To be listed on 19.11.96.

Construction of Sewage Treatment Plants (STPs) in three states i.e. U.P. Bihar & West Bengal

3. An affidavit dated Oct. 8, 1996 has been filed by Mr. Bhag Singh on behalf of National River Conservation Directorate, Ministry of Environment & Forest. We have heard Ld. Attorney General and Mr. Mehta. We have suggested to the Ld. Attorney General that a nodal agency/authority may be constituted to supervise the construction and completion of the STPs in respect of sewarage and household waste generated in the cities situated on the bank of River Ganga. We have further suggested that a technical authority like, NEERI may also be instructed to have the construction of the projects examined from time to time and the progress report submitted to the Govt. of India and to this Court. The Ld. Attorney General states that he would have the matter examined and come back to this Court within two weeks.

Adjourned for 19th Nov., 96 at 2 P.M.

W.P. (C) No. 327/90

4. This Court on Jan. 19, 1995 passed the following order regarding the Gomti component of Ganga Action Plan:

> ...."Mr. Vinay Shankar has referred to the second affidavit filed by Mr. Bhag Singh, on Sept. 26, 1994, and has invited our attention to internal page 39 of the affidavit wherein the Gomti component of Ganga Action Plan (Phase II) has been referred to so far as costs estimates are concerned. Three cities have been picked up under the Gomti component viz. Lucknow, Sultanpur and Johnpur. About 64 crores of rupees which are to be received as aid from the Great Britain (Overseas Development Administration of U.K.) according to the present estimate are likely to be spent on the various projects detailed in the affidavit in the three cities. On our suggestion, Mr. Vinay Shankar has agreed that he would place before this Court, by way of an affidavit, various phases regarding completion of interception/diversion and setting up and completion of sewage treatment plant in the city of Lucknow for our consideration. After examining the affidavit, appropriate directions regarding the spending the money out of the aid received in respect of the various stages of the projects shall be issued."............

5. It seems nothing has been done thereafter. Mr. Panjwani states that due to paucity of time the Central Pollution Control Board has not been able to complete the inspection of all the industries. He may do so before the reopening of the Court after Diwali vacations. We further direct the State of U.P. and the U.P. Jal Nigam to give its response regarding setting up of the Sewage Treatment Plant in the three cities mentioned above and selected as a part of the Gomti component of the Ganga Action Plan. The affidavit shall be filed within two weeks.

6. To come up on 19th Nov., 1996.

SCALE (PIL) 1981-97 1045
DRUG ACTION FORUM AND ORS. *Petitioners*
VS
U.O.I. AND ORS. *Respondents*
CORAM: J.S. VERMA AND K.S. PARIPOORNAN, JJ.

PUBLIC INTEREST LITIGATION — MEDICARE — BAJAJ COMMITTEE REPORT — Drugs that need to be banned on the ground that they are a health hazard to the general public — A list of 9 drugs is submitted and which D.T.A.B. agree with — Some difference in opinion regarding 2 drugs — Court accepts its report with the recommendation therein for withdrawing the use of FDC of S&P injection from the market in a phased manner.

1. The parties as well as the interveners are permitted to file their affidavits and documents on which they rely for the submissions they want to make. This be done within eight weeks. The case be listed on 17.10.1994.

Order dated August 8, 1994 in W.P. (C) No. 698/93 [1997(3) SCALE (SP) 10]

SCALE (PIL) 1981-97 1045
DRUG ACTION FORUM AND ORS *Petitioner*
VS
U.O.I. AND ORS. *Respondents*
CORAM: J.S. VERMA AND K.S. PARIPOORNAN, JJ.

1. The Committee has submitted a report to which the parties want to file their response/objections, if any. This be done within four weeks. In the meantime the Government of India and any other concerned authority in this behalf is free to take such action as it considers appropriate in respect of drugs which in its opinion are to be banned.

2. Intervention applications are allowed.

3. List it on 1.5.1995.

Order dated March 24, 1995 in W.P. (C) No. 698/93 [1997(3) SCALE (SP) 10]

SCALE (PIL) 1981-97 1045
DRUG ACTION FORUM & ORS. ETC. *Petitioners*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: J.S. VERMA AND K. VENKATASWAMI, JJ.

1. Shri Prashant Bhushan names a drug combination which according to his instructions has been recommended to be banned by the Expert Committee. The Learned Addl. Solicitor General submits that it is a Fixed Drug Combination (FDC) of Oxyphenbutazone/Phenylbutazone. Shri Prashant Bhushan, Advocate undertakes to

Order dated August 3, 1995 in W.P. (C) No. 698/93 with W.P. (C) 422/95 [1997(3) SCALE (SP) 11] give in writing a list of other similar drugs which have been recommended to be banned on the ground that they are a health-hazard to the general public.

2. Learned Addl. Solicitor General wants some time to seek further instructions and to file a detailed affidavit of a senior officer dealing with this matter.

W.P. No. 422 of 1995

3. Issue notice. Ms. Sushma Suri, Advocate accepts notice.

4. List these matters on 14.8.1995.

SCALE (PIL) 1981-97 1046

DRUG ACTION FORUM AND ORS *Appellants*

VS

U.O.I. AND ORS. *Respondents*

CORAM: J.S. VERMA AND K. VENKATASWAMI, JJ.

1. A list of 9 drugs is given by learned counsel for the petitioner in the form of a letter dated 3.8.1995 addressed to the Additional Solicitor General (at Pages 1179-80 of the Paper Book) which drugs according to the petitioners require to be banned on the basis of the recommendations of the Drug Technical Advisory Board (DTAB). The learned Additional Solicitor General submits that steps have already been taken by the concerned authorities to immediately ban the manufacture, marketing and supply of the drugs shown at Serial Nos. 1 to 7 in this document. In respect of the drug at Sl. No. 8 therein, the learned Additional Solicitor General submitted that the necessary action for banning the same is likely to be taken within a period of about two weeks from now.

2. In respect of the drug shown at Sl. No. 9 which is a fixed dose combination of Streptomycin with Pencillin, the learned Additional Solicitor General submits that the report of the DTAB does not appear to be comprehensive and therefore further opinion of the DTAB in being sought with reference to certain factors to be specified in the query made for the purpose. The learned Additional Solicitor General submits that the decision of the concerned authorities on the question of ban of this drug would be taken after obtaining this further report from the DTAB. In our opinion, this is a matter of some urgency because of an indication in the report already given by the DTAB suggesting its preference for use of the two drugs individually and not in a fixed dose combination for the reasons which have been given in the report.

3. We, therefore, direct the Government of India and the concerned authorities to take immediate steps to obtain the further opinion of the DTAB in this behalf in the light of what has been submitted by the learned Additional Solicitor General within one month from today and to produce the same in the Court with an additional affidavit mentioning therein the relevant facts on the basis of which the Govt. of India and the concerned authorities form their final opinion in respect of the drug at Sl. No. 9.

4. The concerned authorities would also file an affidavit within four weeks categorically stating therein the steps taken by them to implement the ban in respect of drugs Nos. 1 to 7 and all steps taken to ensure the non-availability of these drugs in any

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Order dated August 14, 1995 in W.P. (C) No. 698/93 [1997(3) SCALE (SP) 11] manner for consumption, including publicity of the ban.

5. A copy of the aforesaid letter dated 3.8.1995 of the learned counsel for the petitioner addressed to the learned Additional Solicitor General be kept as Annexure 'A' to this order for the purpose of the record.

6. List it on 9.10.1995.

SCALE (PIL) 1981-97 1047
DRUG ACTION FORUM AND ORS. *Petitioners/Appellants*
VS
U.O.I. AND ORS. *Respondents*
CORAM: J.S. VERMA AND K.S. PARIPOORNAN, JJ.

1. Learned Additional Solicitor General informs that necessary action has been taken for implementation of the ban not only of Drugs at Serial Nos. 1-7 but also Drug at Serial No.8.

2. In respect of the Drug at Serial No. 9, we consider it appropriate to call for a fresh report of the Committee of Experts constituted in accordance with the orders of this court.

3. We also deem it fit to request Dr. J.S. Bajaj, a former Professor of the All India Institute of Medical Sciences and at present a Member of the Planning Commission to now function as Chairman of this Committee. A fresh report in respect of the Drug at Serial No. 9 would now be given by this Committee chaired by Dr. J.S. Bajaj. The Committee so constituted by this Court would comprise of Dr. J.S. Bajaj as the Chairman and the Members as per list annexed.

4. In forming the final opinion in respect of Drug at Serial No.9 all the points of view including the opinion expressed on the earlier occasion by the Members of the Committee should also be given due weight. Any representation made within a period of three weeks in this behalf is to be handed over to the learned A.S.G. with the requisite number of copies for being forwarded to the Committee for its considerations.

5. List the matters on 4.12.1995.

Order dated October 9, 1995 in W.P. (C) No. 698/93 with W.P (C) No. 422/95 [1997(3) SCALE (SP) 12]

SCALE (PIL) 1981-97 1047
DRUG ACTION FORUM AND ORS. *Petitioners*
VS
UNION OF INDIA AND ORS. *Respondents*
CORAM: J.S. VERMA AND K. VENKATASWAMI, JJ.

1. Learned counsel for the Union of India submits that the report of the Expert Committee is expected within six weeks.

2. List the matters on 22-1-1996.

Order dated December 4, 1995 in W.P. (C) No. 698/93 with C.A. No. 422/95 [1997(3) SCALE (SP) 13]

SCALE (PIL) 1981-97 1048
DRUG ACTION FORUM AND ORS. *Petitioners*
VS
UNION OF INDIA AND ORS. *Respondents*
CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

1. Mr. KTS Tulsi, ASG submits that the minutes of the Expert Committee's last meeting are under circulation and the same would be filed within two weeks. Copy thereof be furnished to the parties. Comments, if any, by the parties be filed within two weeks thereafter. List of any other similar drugs requiring consideration may also be filed by the petitioners giving copy to the Additional Solicitor General.

2. List the matters on 26.2.96.

Order dated January 22, 1996 in W.P. (C) No. 698/93 with W.P. (C) No. 422/95 [1997(3) SCALE (SP) 13]

SCALE (PIL) 1981-97 1048
DRUG ACTION FORUM AND ORS. *Petitioners*
VS
UNION OF INDIA AND ORS. *Respondent*
CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

1. Report of the Expert Committee has been filed. Comments, if any to the Report, be filed within two weeks.

2. List on April 8, 1996.

Order dated February 26, 1996 in W.P. (C) No. 698/93 with W.P. (C) No. 422/95 [1997(3) SCALE (SP) 14]

SCALE (PIL) 1981-97 1048
DRUG ACTION FORUM & ORS. *Petitioners*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

1. The report of the Expert Committee headed by Prof. J.S. Bajaj, after its meeting held on 8th January, 1996 has been submitted. We have perused the report. The report contains the unanimous opinion of the Committee.

2. The unanimous opinion expressed in the above report is for withdrawing the use of Fixed Dose Combination (for short "FDC") of Streptomycin and Pencillin (for short "S&P") injection from the market in a phased manner. The further opinion of these experts expressed as its recommendation, is that the time upto 1st January 1997 may be given to the manufacturers to withdraw the drug for human use from the market. This time frame is considered appropriate by the Committee of Experts in the context of

Order dated April 15, 1996 in W.P. (C) No. 698 of 1993 [1997(3) SCALE (SP) 14] logistics of the pharmaceutical industries. The Committee has also made some other recommendations, which include the urgent need of a list of essential drugs at the national level and the recommendation made is for compilation of such a list on top priority with provision for updating and publishing the list regularly at periodic intervals.

3. Certain objections were filed on behalf of three manufacturers of the FDC of S&P injections. Shri F.S. Nariman and Shri A.K. Ganguly appearing for them were heard. On a consideration of their objections, we find no merit in them. The report of the Committee of Experts is detailed and gives cogent reasons based on authentic statistics and medical literature which fully support the conclusions reached in the report. No significant statistics or authentic material to the contrary has been shown to support the objections. In support of the objections, several certificates by medical practitioners have been filed to indicate the extensive use of this FDC. In our opinion, the nature of these certificates which contain mere general statements is indicative of the indiscriminate use of this FDC and it does not support the submission that its availability is necessary for administering proper medical treatment for any specific illness, which is not possible in the absence of availability of such FDC. Moreover, this aspect also has been considered and adequately dealt with in the report of the Committee. We do not find any merit in the objections to the report and the submission made on behalf of these manufacturers not to direct phasing out of the use of the FDC of S&P injection.

4. In view of the above conclusion reached by us, we reject the objections and accept the above report of the Committee of Experts with the recommendation therein for withdrawing the use of FDC of S&P injection from the market in a phased manner.

5. The question now is of the time for phasing out the FDC of S&P injection from the market. The Committee has recommended that time upto the 1st January, 1997. However, on an overall assessment of the situation and taking into account all the relevant factors, we consider it appropriate that the time for phasing out the FDC of S&P injection from the market should be fixed upto the 1st January, 1998. We direct accordingly.

6. We further direct that the concerned authorities would take the necessary steps forthwith to issue the necessary instructions/directions and to ensure their implementation to check indiscriminate use of this drug even during the period fixed for phasing it out. The authorities must ensure that the administration of the FDC of S&P injection is only on due certification of a qualified medical practitioner of the need of this injection and that the necessary record is maintained to account for the supply and use of the entire stock of the FDC of S&P injection. All necessary steps to ensure full compliance of these directions must be taken by the concerned authorities within a period of one month.

SCALE (PIL) 1981-97 1049
DRUG ACTION FORUM AND ORS. *Petitioners*
VS
UNION OF INDIA AND ORS. *Respondents*
CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

1. List the matters on 26.7.96.

Order dated May 6, 1996 in W.P. (C) No. 698/93 with W.P. (C) No. 422/95 [1997(3) SCALE (SP) 15]

SCALE (PIL) 1981-97 1050

DRUG ACTION FORUM AND ORS. *Petitioners*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

1. The report dated 5th July, 1996 of the Expert Committee with one dissenting note in respect of the six drugs mentioned therein has been submitted which is placed on record. We consider it appropriate that the opinion of Dr. J.S. Bajaj who was requested earlier to function as the Chairman of the Committee may also be obtained in relation to this report. Dr. J.S. Bajaj may offer his opinion on the same as such or after conferring with the members of the Expert Committee who have given the report, if he considers that necessary. Dr. Bajaj is, therefore, requested to give his opinion in this behalf as early as possible. Learned Additional Solicitor General undertakes to supply all the papers to Dr. Bajaj and to convey this request to him. Learned Additional Solicitor General assures us that all the necessary papers be handed over to Dr. Bajaj within three days.

2. List on 4th November, 1996.

Order dated September 2, 1996 in W.P. (C) No. 698/93 with W.P. (C) No. 422/95 [1997(3) SCALE (SP) 16]

SCALE (PIL) 1981-97 1050

DRUG ACTION FORUM AND ORS. *Petitioners*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

1. We have perused the report given by Dr. J.S. Bajaj on our request. The contents of the report are quite revealing and prima facie indicative of some serious lapses by some persons involved in the performance of the exercise in question. We also find no reason to keep this report confidential. It relates to a matter of public interest and the contents of the report should be known to all concerned. We, therefore, direct that the report to be taken on record. A copy of the same be supplied to the learned counsel for the petitioners as well as the learned counsel appearing for the Hochest India Ltd. The response, if any, to this report be filed by the Govt. of India and the Hochest Co. within 10 days. The Govt. of India in its report should state clearly the action which it proposes to take on the basis of the report of Dr. J.S. Bajaj.

2. List the matters on 16.12.96.

Order dated December 2, 1996 in W.P. (C) No. 698/93 with W.P. (C) No. 422/95 [1997(3) SCALE (SP) 16]

SCALE (PIL) 1981-97 014090 1051

COMMON CAUSE, A REGD. SOCIETY, NEW DELHI *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: S.C. AGRAWAL AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — BLOOD BANKS — Judgment reported in 1996 (1) SCALE 32 — States in which Blood Transfusion Councils have not been constituted — Court directs issuance of notices to show cause why contempt proceedings should not be initiated against the concerned States/Union Territories.

1. We have perused the application for extension of time submitted on behalf of the Union of India and we have heard the learned counsel in support of the application. Keeping in view the facts and circumstances and the difficulties pointed out in the said application, we grant three months time from today to the various authorities of the Union of India to comply with direction No. 12 contained in the judgment dated 4.1.1996. It is made clear that no further time will be granted and the steps should be taken to see that the said direction is complied with within the extended period.

Order dated February 17, 1997 in I.A. No. 3 in W.P. (C) No. 91/92. [1997(3) SCALE (SP) 21]

SCALE (PIL) 1981-97 1051

COMMON CAUSE, A REGD, SOCIETY, NEW DELHI *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: S.C. AGRAWAL AND S. SAGHIR AHMAD, JJ.

1. From the affidavit of Dr. S.P. Agarwal, the Director General of Health Services in the Ministry of Health Services, Government of India that has been filed in pursuance of the directions contained in the Order dated September 16, 1996 it appears that in the following States/Union Territories the Blood Transfusion Councils have not yet been constituted:-

Andhra Pradesh, Kerala, Maharashtra, Tamil Nadu, Gujarat, Punjab, Goa, Pondicherry, Meghalaya, Mizoram, Arunachal Pradesh, Tripura, Nagaland and Lakshadweep.

2. Issue show cause why contempt proceedings should not be initiated against the concerned States/Union Territories. Notice be made returnable within 4 weeks.

3. The notice may also be issued to the Secretary, National Blood Transfusion Council, New Delhi to indicate what steps have been taken by the Council after its constitution in pursuance of the direction contained in the judgment of this Court. Necessary affidavit in this regard should be filed within four weeks.

4. List after four weeks.

Order dated March 3, 1997 in W.P. (C) No. 91/92. [1997(3) SCALE (SP) 21]

SCALE (PIL) 1981-97 1052

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — Construction of houses in the areas coming under Faridabad Municipal Corporation — Court, pending further orders, directs the Municipal Corporation to sanction plans for construction of houses within 2½ floors' range without insisting upon no objection from the State or Central Pollution Control Board and keep the plans ready.

1. We have heard the counsel for the parties. We propose the interim order as under:

2. The grievance of the petitioner is that when individuals who seek to construct their houses applying the plans of the Faridabad Municipal Corporation, the plans are not being approved on the ground that the clearance certificates are not obtained from the Pollution Control Board. We do not have the sufficient time to dispose of the matter today, we think that,

1) all the individuals who seek to construct their houses within 2½ floors' range as indicated in the judgment of this Court, they are at liberty to file plans before the competent Authority. The competent Authority would examine whether the plans are in conformity with the Rules and within 2½ storeys' range laid by this Court. If the authority finds the plans in conformity with the above Rules and the directions given by this Court, the same may be examined and kept ready until further orders.

2) For the examination of these matters, the authorities are directed not to insist upon production of no objection certificate from the State or Central Pollution Control Board.

3. Notice also will be given to all the authorities in this behalf. List in the last week of April, 1997 before this Bench.

Order dated March 17, 1997 in R.P. (C) No. 914/97 in I.A. No. 29 in W.P. (C) No. 4677/85 [1997(3) SCALE (SP) 23]

SCALE (PIL) 1981-97 1052

DR. GEORGE MATHEW *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA AND S.P. KURDUKAR, JJ.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — SUGAR SCAM — Gian Prakash Report — Court issues certain directions.

1. Mr. Venugopal, learned counsel for the petitioner and Mr. Salve, learned counsel for respondent No.4 - Kalp Nath Rai, undertake to furnish list of documents which they want the Central Government to make available to the parties for their inspection and examination by the court. This be done within two weeks. Response be filed within four

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Order dated February 17, 1997 in W.P. (C) No. 622/95. [1997(3) SCALE (SP) 24] weeks thereafter.

2. Learned Attorney General further submits that in the meantime he will also take instruction to inform the court of the action taken and proposed to be taken by the Government on the Gian Prakash Report.

3. List the matter on 8.4.97.

SCALE (PIL) 1981-97 1053
VINEET NARAIN AND ORS *Petitioners*
VS
UNION OF INDIA & ANR. *Respondents*
CORAM: J.S. VERMA AND S.P. BHARUCHA AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — HAWALA CASE — Court adjourned the hearing to April 7, 1997.

1. Heard Shri Anil B. Divan, the learned *amicus curiae* and the Attorney General.

2. List on 7th April, 1997 at 2.00 p.m.

Order dated February 17, 1997 in W.P. (Crl.) No. 340-43/93 [1997(3) SCALE (SP) 24]

SCALE (PIL) 1981-97 1053
M.C. MEHTA *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: A.M. AHMADI, CJI., S.C. SEN AND SUJATA V. MANOHAR, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION IN DELHI — Catalytic convertor for diesel trucks and buses — Court issues certain directions.

1. In the 25th Bi Monthly Report of the Committee, paragraph 25.23, it is mentioned that while the Committee was in Canada they learnt that there could be a Catalytic Convertor for diesel trucks and buses. At present the sulphur content in the diesel has been brought down to 0.5% pursuant to the earlier order passed by this Court. The question for this Court for examining was whether it could be brought down further to protect the environment. It is very this point of view that the Committee also examined the question regarding the installation of catalytic convertors in heavy vehicles plying on diesel. One of the members of the Committee representing the Automobile Industry had, however, filed his dissenting notes stating that these catalytic convertors were not available in the country and had to be imported for which certain experimentations are necessary. Mr. Reddy the learned counsel for the Union of India states that the Union of India will examine this proposal of the Committee and will, thereafter, file a proper affidavit explaining whether or not it is feasible to fit the existing or future manufactured heavy vehicles with such catalytic convertors. He states that he

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Order dated February 14, 1997 in W.P. (C) No. 13029/85 with W.P. (C) No. 9300/82, W.P. (C) No. 939/96 [1997(3) SCALE (SP) 24] may be given four weeks time to have the matter examined by the Government of India.

2. As far as two stroke engine vehicles are concerned we have already given directions earlier in point of time for carrying out experiments on the use of propane and we are told that the exercise is in progress. Mr. Reddy, however, states that as far as the Government is concerned the Company carrying out the experiment has not involved the Government and the GAIL as yet but he has no grievance to make at this stage because he states that he hopes they would be associated with the exercise.

3. With reference to our order dated 8.3.96 the learned counsel for the NDMC states that he was not present on that date because NDMC is not a party and had no intimation to be present at the hearing. He states that so far as Gymkhana Service Station is concerned permission has already been granted. So far as Bhatia Service Station is concerned certain particulars have been sought from the proprietors but they have not been received as yet. These have been outlined in paragraph 4 of their affidavit dated 6th February, 1997. Learned counsel also states that as soon as the particulars are given the matter would be processed without loss of time. He also complains that some illegal construction has been carried out by M/s Bhatia Service Station. It will thus be seen that so far as NDMC is concerned it has granted permission in one case and is awaiting clarification in the other and counsel states that as soon as the clarification is received the matter will be examined forthwith and appropriate steps will be taken.

4. Counsel for MCD states that for the land required for CNG Station in Sarai Kalen Khan, the requirements of the Master Plan have to be adhered to and if the land falls within the Master Plan the terms and conditions imposed in that behalf to be respected. In that context the contention is that for setting up of CNG Station and allotment of land there are some difficulties. However, counsel for the DDA states that he will get the matter examined and file an affidavit in that behalf. Counsel for DDA states that they have already changed the user and have communicated the same to MCD. However, counsel for MCD states that they have not yet received any such communication, nor have they been informed of the outcome of the Technical Committee Meeting held on 4.2.97. Counsel for DDA states that he will file an affidavit and clarify the position within a week's time.

5. *Let the matters come up after four weeks.*

SCALE (PIL) 1981-97 1054

DRUG ACTION FORUM AND ORS. *Petitioners*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — MEDICARE — BAJAJ COMMITTEE REPORT — Drugs that need to be banned on the ground that they are a health hazard to the general public — update of orders reported in 1997(3) SCALE(SP) 10-16.

Order dated February 12, 1997 in WP (C) No. 698/93. [1997(3) SCALE (SP) 27]

1. By our earlier order, the Report of Dr. J.S. Bajaj dated 30th October, 1996 has been taken on record. We accept the same.

2. One of the recommendations made in the Report of Dr, Bajaj (para 21) is for the constitution of a Core Group which was agreed to in principle in the meeting of the Expert Committee held on 5.7.1996. We are of the opinion that this recommendation in particular needs to be accepted and acted upon forthwith. Accordingly, in accordance with that recommendation, we constitute a Core Group as under :

(a) The three members previously nominated by this Court and co-opted by the Technical Sub-Committee, namely,
   (i) Dr. N.H. Antia;
   (ii) Dr. Naresh Banerjee; and
   (iii) Dr. Nityanand.
(b) The Director General of Health Services (DGHS).
(c) The Director General of Armed Forces Health Service (DGAFHS).
(d) The Drugs Controller General of India.

3. The Drugs Controller General of India is to act as the Convenor of the Core Group.

4. A copy of the Report of Dr. J.S. Bajaj together with a copy of this order be furnished to the learned Additional Solicitor General who would ensure that the same is made available to the Convenor of the Core Group and all its members. The Core Group is requested to proceed with the task and complete the same as expediously as possible to enable further action being taken on that basis by this Court. The learned Additional Solicitor General will intimate to the Court after ascertaining from the Convenor the time likely to be needed by the Core Group for this purpose. This be done within two weeks.

5. Any material which is considered relevant by any of the affected parties may be indicated by their learned counsel to the learned Additional Solicitor General for being transmitted to the Convenor of the Core Group for consideration by the Core Group before formation of its opinion. This be done within two weeks.

6. The submission of Shri F.S. Nariman, Shri Anil B. Divan and Shri Mukul Mudgal, learned counsel for Hoechst India Limited, Tata Pharma Limited and Cadila Pharmaceuticals Ltd. respectively is that the fixed dose combinations of Analgin known by the brand names - Baralgan, Spasgan and Trigan Injection & Trigan E Tablet respectively - which have already been manufactured against orders received from some foreign countries wherein consumption of the same is not banned may be permitted to be exported to them to enable due performance of those contracts of drugs manufactured prior to 17th December, 1996. Learned counsel submit that there would be no supply of the manufactured drugs for personal consumption anywhere in India. They undertake to furnish particulars of such existing stock duly certified by the concerned authorities within a week. The learned Additional Solicitor General is required to seek instructions in this behalf and to inform us whether necessary steps can be taken by the authorities to ensure that such existing stock of these drugs is utilised only for export in the above manner and not for consumption within the country.

7. List on 24th February, 1997.

SCALE (PIL) 1981-97 1056
RAJEEV MANKOTIA *Petitioner*
VS
THE SECRETARY TO THE PRESIDENT OF INDIA & ORS. *Respondents*
CORAM: K. RAMASWAMY AND G.B. PATTANAIK, JJ.

PUBLIC INTEREST LITIGATION — ANCIENT MONUMENTS — THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958 — Whether the Viceregal Lodge in Shimla should be declared as historical heritage (monument) and not be converted into a five star Hotel — Disposing the writ petition Court had earlier directed the Government of India to notify the entire area of the Viceregal Lodge as a protected ancient monument — Court records its compliance — Court also observes that it is needless to mention that as soon as the Indian Institute of Advance Studies vacates the building and hands it over to the Archaeological Department, the Government should provide the necessary budget for effecting repairs and restoring to the building its natural beauty and grandeur. It is also necessary that its proper maintenance and preservation is undertaken as an on-going process to protect the historical heritage and needed repairs are effected from time to time — Court further directs the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons in continued to be preserved. They are pride of Indians and places of public visit. The tourist visitors should be properly regulated. Collection of funds by way of admission/entrance fee should be conscientiously accounted for and utilised for their upkeep and maintenance under respect regulations/rules. Adequate annual budgetary provisions should be provided.

1. Viceregal Lodge at Shimla is a harbinger of Colonial past, with architecturally grandeur and beauty of Elizabethian Era and stands a mute witness to the transition of independence to the people of India after sustained non-violent struggle by the Father of the Nation, Mahatma Gandhiji. Three historical meetings between colonial administration and the Indian leaders took place to discuss the issue of the Indian independence under the leadership of Mahatma Gandhiji, viz., (i) in June-July 1946 - the historical Cabinet Mission of the Indian leaders; (ii) in May-June 1947; and (iii) the finl one wherein historical decision was taken by Louis Mountbatten for transition of the power conveying the proposal to the Indian leaders through Pandit Jawaharlal Nehru; that was followed by grant of independence to the nation and the worst holocaust of communal disturbance due to partition of the great ancient nation into India, i.e., Bharat, and Pakistan.

2. The journey of Simla, Summer Capital of the Supreme Government, started in 1827 by the first Governor General, Earl of Amherst and Viceregal Lodge, the official residence built by the 17th Viceroy, Earl Dufferin, was occupied on July 23, 1888. Though Lord Dufferin and Lady Dufferin personally supervised its taking finished shape, its completion work went on till

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Order dated March 27, 1997 in W.P. (C) No. 862 of 1990. [1997(4) SCALE 368]

September 1888 which led the present shape of the building given by Earl of Marquis of Lansdowne till 1889 - the only Viceroy who exclusively lived therein during his entire tenure, i.e., from 10th December, 1888 to 26th June, 1894 in Summer Camp. The building was built with an exquisite Himalayan gray stones and personified the English Renaissance of Elizabethian style of architecture. The beauty and grandeur of the building is unique. The Viceroys/Governor Generals used this building as Summer Camp from April to October of each calendar year and the British ruled the entire India from this building. It was also used as part of Legislative Wing. Ultimately, after independence, it was renamed as 'Rashtrapati Niwas', dawning with smile the freedom for Bharat and the Presidents of the Bharat Republic stayed therein as Summer Resort until Dr. Sarvepalli Radhakrishnan, the second President had it handed over to the Indian Institute of Advanced Studies in the year 1964. The President himself had inaugurated the Institute when Dr. Jakir Hussain, then as its Chairman, and who later became the President of India, had chaired the meeting. It thus furnishes the historical evidence of the Colonial holocaust unleashed on Indians and reflects upon the triumph of Indian nationalism; it has laid seed-bed to the end of the British colonialism. Whether such a building is required to be maintained as historical monument of national importance, is the question before us.

3. When Dr. Radhakrishnan, the President of India felt that since the President spent hardly 120 days in 10 years, i.e., 10 days a year, it was worthwhile to house the said Institute therein, instead of keeping the historical monument as idle building which would facilitate maintaining the grandeur and beauty of the building. However, the fact is that with the passage of time, it has faded out and lost its real beauty. While the Institute was being so run, cruel decision was taken by the Cabinet of the Union of India to convert the building, a priceless treasury of our historical heritage, into tourist hotel, while purporting to maintain the main part of the building as historical resort. Feeling the inner voice of its ultimate destruction, the petitioner has knocked the door of this Court, and in our view rightly, to protect it as the historical heritage and to preserve our posterity.

4. Before considering whether the viceregal Lodge should be declared as historical heritage (monuments), let us have a look at the legal setting in that behalf. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short, the `Ancient Monuments Act') provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance. The Act was enacted to clarify the legal position that the Central Government regulates exclusively ancient monuments etc. of national importance, leaving the field open to the State Legislatures to enact the law on the subject, i.e., ancient monuments of State importance. Section 2(a) defines 'ancient monument' to mean *any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes* (emphasis supplied):

(i) the remains or an ancient monument;
(ii) the site of an ancient monument;
(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and
(iv) the means of access to, and convenient inspection of an ancient monument.

5. Section 3 of the Act declares that all ancient and historical monuments and archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act 1951, or by Section 126 of the States Re-organisation Act, 1956, to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purpose of this Act. Section 4 empowers the Central Government to declare any ancient monuments or archaeological site and remains not included in Section 3 to be of national importance by giving two months notice of its so declaring. The Ancient Monuments Preservation Act, 1904 provides for the preservation of ancient monuments and objects of archaeological, historical or artistic interest. Section 2(1) defines 'ancient monument' in the same language as Section 2(a) of the Ancient Monuments Act. Section 2(4) defines 'maintain' and 'maintenance' to include the fencing, covering in, repairing, restoring and cleaning of protected monument and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto. Section 3 deals with 'protected monuments' and empowerers the Central Government, by a notification in the official Gazette to declare an ancient monument to be a protected monument under the said Act. Section 11 enjoins that the Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in Section 4 or which the Government has acquired under Section 10 etc.

6. It would, therefore, be manifest that all ancient and historical monuments and all archaeological sites and remains or any structure, erection or monument or any tumulus or place of interment shall be deemed to be ancient and historical monument or archaeological sites and remains of national importance and shall be so declared for the purpose of Ancient Monuments Act if they have existed for a century; and in the case of a State monument, of State importance covered by the appropriate State Act. The point of reference to these provisions is that an ancient monument is of historical, cultural or archaeological or sculptural or monolithic or artistic interest existing for a century is of national importance or of State importance. In other words, either of them are required and shall be protected, preserved and maintained as national monuments or State monuments for the basis which not only gives pride to the people but also gives us insight into past glory of our structure, culture, sculptural, artistic or archaeological significance, artistic skills and the vision and wisdom of our ancestors, which should be preserved and perpetuated so that our succeeding generations learn the skills of our ancestors and traditions, cultural and civilisation. They would have the advantage to learn our art, architecture, ascethetic tastes imbibed by the authors of the past and to continue the same traditions for the posterity. Preservation and protection of ancient monuments, is thus the duty of the Union of India and the State Government concerned in respect of ancient monuments of national importance or those of State importance respectively to protect, preserve and maintain them by preserving or restoring their original conditions.

7. Coming to the birth, the improvements and the existence of the Viceregal Lodge, we have the graphic account in that behalf by Edward J. Buck in his 'Simla Past and Present'. Before adverting to it, it is of importance to note that Simla is a beautiful Hill Resort on the small spurs of the lower Himalayas. At the beginning of the last century, though Simla did not find place in the world tourist map and remained a small village taken by the British from the Jhind

Rana in 1855 and then given to Maharaja of Patiala for the assistance rendered to the British in the Nepal War. Maharaja of Patiala maintained Simla as a sanatorium. The British, thereafter, had stationed their commander of the North-Eastern States at Simla. Captain Charles Pratt was the first foreigner sent as Superintendent of the Hill States. He was stationed at Simla. After survey of the area, the Britishers discovered the beauty and grandeur of Simla and the hills and developed it as a hill resort and ultimately summer resort by shifting the administration from Calcutta and later from Delhi. The first Governor General, the Earl of Amherst, for the first time, visited Simla and stayed in the house of Captain Kennedy, namely, Kennedy House. Thereafter successive Governor Generals and Viceroys continued to stay, apart from Viceregal Lodge, for some time, in various houses by name Bentinck Castle, Auckland House, Strawberry Hill, Peterhof. Ultimately, as stated earlier, Earl of Dufferin had the building plans approved and got constructed the Viceregal Lodge and entered for the first time into the House. The structural and magnificent furnishing done to the Viceregal Lodge finds expression delienated in Buck's "Simla Past and Present". Lady Dufferin mentioned in her diary, seeing the furnished building on Sunday, 15th July, 1888 as under:

> "I went to the new house this afternoon, and it did look lovely. It was one of Simla's most beautiful moments, between showers, when clouds and hills, and light and shade, all combine to produce the most glorious effects. One could have spent hours at the window of my unfurnished boudoir, looking out on the plains in the distance, with a great river flowing through them : at the variously shaped hills in the foreground, brilliantly coloured in parts, and softened down in others by the fleecy clouds floating over them or nestling in the valleys between them. The approaching sunset, too, made the horizon gorgeous with red and golden and pale-blue-tints. The result of the whole was to make me feel that it is a great pity that we shall have so short a time to live in a house surrounded by such magnificent views."

8. On 23rd July, 1888, they returned to the building and mentioned as under:

> "We are sending things up to the house and hope to sleep in it on Monday. We really inhabit the new Viceregal Lodge today (23rd July, 1888) so I left the old directly after breakfast, just returning there for an hour at lunch time, and busied myself whole day arranging my room and my things, and the furniture in the drawing-room. Happily the weather was very tolerable, and our beds got up here dry. D. and the girls did not come near the place till dinner time, when everything was brilliantly lighted up by the electric light. It certainly is very good, and the lighting up and putting out of the lamps is so simple that it is quite a pleasure to go round one's room touching a button here and there, and to experiment with various amounts of light. After dinner we went down to look at the kitchen, which is a splendid apartment, with white tiles six feet high all round the walls, looking so clean and bright. We sit in the smaller drawing-room, which is still a little stiff and company-like, but it will soon get into our ways and be more comfortable."

9. On August 8, 1888, they had first entertainment in the new house and the book contains its account as under:

> "We had our first entertainment in our new house tonight. It looked perfectly lovely, and one could see that everyone was quite astonished at it and at the softness of the light. First we had a large

dinner for sixty-six people at one long table. The electric light is enough, but as candelabra ornament the table we had some on it. At one end of the room there was a side-board covered with gold plate, etc., and at the other end double doors were open, and across the ball-room one saw the band which played during dinner. We had all the Council and `personages' of Simla, and the Minister, Asman Jha, from Hyderabad, who brought his suite. After dinner people began to arrive for the dance. When no t dancing, everyone was amused roaming about the new rooms, and going up to the first floor, whence they could look down upon the party."

"Viceregal Lodge possess, as it rightly should, one of the most commanding position in Simla. It lies to the extreme west of the station, and is one of the first objects to strike the eye as the traveler approaches from Kalka. Described briefly it consists of a main block of three stories, and another called the kitchen wing, of five storeys, but the latter is built on the side of a precipice, and commences three storeys below the ground level of the main block and east wing; so that viewed from the north-east the house has a very lofty, somewhat forbidding appearance, and might at a distance be mistaken for a medieval castle.

The style of architecture throughout is English Renaissance (Elizabethan), the masonry of the walling is light blue limestone, and the wrought stone work is all of sand stone of a very fine grain and beautiful light gray tint. This stone is uniform in texture, and is capable of being worked to very short arises; the moulding are all true, and where carving has been carried out it is bold and sharp. Very little stone carving has been used, but what there is of it relives the plain parts, and is very effective. The walling stone was quarried about five miles away and was transported to Simla on mules, but much of this was found to be porous and was replaced with hard stone from Kalka and Sanjouli at a cost of nearly a lakh and a quarter. The cut stone was brought in for 50 miles from the foot of the hills near Kalka. Carrying on the labour in the winter was a matter of much difficulty as the masons refused to work except for extremely high wages, while carpenters were not obtainable at any price. A small tower surmounts the house from which flies the flag which denotes the presence of the Viceroy in Simla. In this tower are the water tanks into which is pumped the supply from the municipal mains, and the view from its summit on a clear day is magnificent. To the north, and north-east particularly, the ranges of perpetual snows are seen to great advantage over the peaks of the nearer ranges, while on the west, especially in the rains, there is a grand view of the plains, with the Sutlej winding away in the distance. The house, grounds, and approaches are now lighted by electricity. There are about 1,000 lamps, the majority of 16 candle-power, and the engines which used to supply the power situated near the main entrance gate and close to the stable range. This shed has since been dismantled and is converted into a transformer room on the ground floor, with the offices of the Superintendent of Viceregal Lodge on the first floor. The engines were sold and replaced by a transformer. Inside, the house is beautifully built and finished, the fine entrance hall, with its gallery leading to the ball-room, being perhaps the main feature. This gallery is fifty feet in height, ninety feet long, but only eighteen feet broad, which is really much too narrow.

The woodwork, however, is beautiful. for instance, the treads, newels, and handrails of the main staircase are of teak, the blusters are solid walnut, the carriages and concealed portions of the framing of the stairs are of deodar, some of the carving being very bold and effective. Heavy velvet curtains divide the galler from the ball-room an apartment seventy feet by thirty feet with a side annexee seventy feet by ten feet on the west, and a vestibule seventeen feet by thirty feet on the east. These really are a portion of the room as they communicate with it by large opening twenty feet wide. Another velvet curtain hangs over the opening to the state drawing-room, sixty feet by thirty feet, a charming room, with the wall panels hung in silk tapestry and the woodwork painted white. The upper part of the gallery is hung with Japanese paper in white and gold heavily embossed. Perhaps the state dining-room appeals most to the ordinary visitor. This is panelled all round ten feet high with teak, the upper two feet being in pierced strap work, and supporting the shields charged with the armorial bearings of the several Governors-General and Viceroys of India, all illuminated in the proper heraldic colours. These now make a splendid decoration. The walls are divided by means of pilasters supporting the ceiling beams, and their upper portion is hung with crimson silk and woolen tapestry, while there is a good deal of bold carving in the room. On the occasion of a state dinner the scene is a particularly brilliant one. the furnishing of the house was originally done partly by Messrs. Maple & Co. who sent out their assistants for the purpose; many of the simpler articles, however, were made by Punjab carpenters whose work was excellent."

10. Lord Lansdowne, during his term of office made improvements and the grounds surrounding the house were planted out with trees and shrubs. Many improvement which were designed mainly for the purpose of garden parties were carried out under the supervision of Mr. A Parsons, the English Authority on gardening in Simla. The Viceregal entertainments were conducted in large scale.

11. When Lord Curzon took over the charge in 1889, Lady Curzon took interest in renovating the building. She got hung damask, sky-blue and pale green in the two drawing rooms, yellow in the ball room, and crimson in the dining room. Most pleasant part of the house was, in their view, its grounds and Lord Curzon added to them an avenue of limes; the rose 'pergola' which was such a typical feature of many large victorian gardens and parks, was designed by Lord Curzon. Lady Curzon felt that "a look out of the windows makes up for it all, and I can live on views for five years" (as mentioned in 'A Hill Station - Simla in British India' by Pat Barr and Ray Desmond. In this behalf, it is of interest to note that the British authors have not lost their gratitude to mention the native people, their glamour and simplicity. One of the greatest Telugu poets, Sri Sri in his 'Mahaprastavan' had said that the beauty of Taj Mahal cannot be measured by the Emperor Shahjahan's point of view who got it constructed in memory of his beloved queen Mumtaj Mahal; but from its delicate craftsmanship and carvings of the workers, architects and the masons who built the mantion, the world renowned national heritage of our nation. Similarly, reflections can be found from the masons, the men and women who built the Viceregal Lodge under the supervision and guidance of Mr. Henry Irvin, the Architect and the Chief Superintendent of the work assisted by Mr. F.B. Harbert and L.M. Seth Clay as Executive Engineer and M/s. A. Scott T. Macpheryn and

T. English Assistant Engineers as mentioned by Mr. Edward J. Buck in his Second Edition recorded from the diary of Lady Dufferin on July 16th 1887 as under:

> "D. took Hermie and me all over the house in the afternoon. We climbed up the most terrible places, and stood on single planks over yawing chasms. The workpeople are very amusing to look at especially the young ladies in neckless, bracelets, earrings, tight cotton trousers, turbans with long veils hanging down their backs, and a large earthen-ware basin of mortar on their heads. They walk about with the carriage of empresses, and seem as much at ease on the top of the roof as on the ground-floor; most picturesque masons they are. The house will really be beautiful, and the views all round are magnificent. I saw the plains distinctly from my boudoir window, and I am glad to have that open view, as I shall not then feel so buried in the hills."

12. Thus, the great Indian masons, men and women had built the magnificent ancient monument with their heart, sweat and labour to be enjoyed by the Viceroys/Governor Generals who conquered the country because of disunity among the Indian rulers and because some rulers connived with the British forces. Disintegration of the society was on account of region and religious differences, caste structures and mostly personal feuds and rivalries among the Rajas and Maharajas themselves.

13. As stated hereinbefore, the freedom movement was launched in a non-violent manner, the Father of the Nation, Gandhiji called by the people with love "Bapuji" and sustained as people's movements was carried on over years at the sacrifice of life of numberless patriot men and women. The Viceregal Lodge witnessed two historical Conferences held by the Indian leaders with the Viceroy/Governor General and in particular Lord Mountbatten who was instrumental in handing over the Bharat to us. The ancient India got dissected into two parts, viz., Bharat and Pakistan, due to two-nation theory successfully campaigned by Sri Jinnah on behalf of the Muslims, who later regretted for the damage done by him to the great nation. The emergence of two nations ultimately resulted in the halocaust of communal disturbances and loss of lives of innocent British Indians who included both Hindus and Muslims. In this behalf, in `Freedom at Midnight' by Larry Collins and Dominique Lapierre it is mentioned in Chapter VI titled "A Pnecious Little Place, Simla, May 1947" precluding the events leading to the division of India. It is mentioned therein that during May 1947, Lord Mountbetten had stationed himself in Simla in this very Viceregal Lodge. The authors have narrated their research in the following words:

> "Each year in mid-April when the warm weather arrived, the Viceroy's departure for Simla in his white and gold viceregal train signaled that the mountain capital's season had begun."

14. It is mentioned at page 123 that "Much of that old Simla was already gone by the time Louis Mountbatten arrived in early May 1947. Now an Indian could even walk down the Mall - provided he was not wearing the national dress of his country". Earlier, Indians were prohibited from going there. "Simla changed with an easily foreseen rapidity after independence. The Indians, because of its connotations, abandoned it as their summer capital. The only thing which remains of the old Simla, `M.S. Oberoi, owner of the Cecil's Hotel and Chairman of Oberoi's Hotels Ltd., lamenated in 1973, `is the climate'. The viceregal Lodge also was used as a part of the Legislative Wing for the summer session of Parliament and it, therefore, has the taste of transacting legislative business with the Indian Legislators partly composed with the British Administrators. Lord Mountbatten had finalised the plan in Simla to divide India into three countries, namely, Bengal, composed of East and West Bengal, Pakistan and India, apart from retention of the respective areas had by named rulers. A graphic account was given as to how Lord Mountbatten had his plan secretly disclosed, by inviting Pandit Jawaharlal Nehru, the first Prime Minister, who was a very close friend of Lord Mountbatten and an important spokesman on behalf of the Congress Party, to Simla. Lord Mountbatten had shown his plan of division of India. The violent reaction of Panditji was noted as mentioned at page 126 as under:

> "The British had run India for three centuries with the byword `Divide and Rule.' They proposed to leave it on a new one: `Fragment and Quit'. White-faced, shaking with rage, Nehru stalked into the bedroom of the confidant Krishna Menon who'd accompanied him to Simla. With a furious gesture, he hurled the plan on to his bed."
>
> 'It's all over' shouted."

15. Because of the reaction of Panditji to such a division of India, Mountbatten realised that he cannot succeed in his effort to hand over the power to the people in fragmentation. Therefore, he redrafted the plan and at the call of the then Prime Minister, Mr. Atlee, he went to London, had discussions and ultimately succeeded to divide the country as India, i.e., Bharat and Pakistan; and Independence Act was enacted by British Parliament in conclusion. It would, thus, be seen that Viceregal Lodge, as stated earlier, is a mute witness to the destruction of Indians, their subjugation as subject of British empire who ruled the country for over three centuries by 'divide and rule'. The agony of the Indians and the glory of the British empire and the Simla as its summer Seat for the Asian British empire was witnessed by this Viceregal Lodge. Equally, it is also a witness to heralding of new ear of independence though the ancient India was fragmented into two nations, namely, India, i.e., Bharat and Pakistan. India, thus, became a sovereign, socialist, secular democratic republic under a written Constitution. Democracy is its basic feature; constitutionalism, rule of law and democratic governance as basic means to establish an egalitarian social order in which every citizen of Bharat is entitled to enjoy justice - social, economic and political - liberties, and equality of status and of opportunity, with dignity of person and fraternity among all the sections of the society as an integrated Bharat. Such being the historic evidence furnished by a Viceregal Lodge, is it not the duty of the Indians and of the Government of India to preserve Viceregal Lodge as a monument of national importance for the posterity of the historic evidence so that every Indian citizen while visiting Shimla would have the glimpses of it to recall the folly of disunity, teaching as the lesson of being united so as not to destroy ourselves once over and lose democracy and liberties on account of disunity, disharmony on grounds of religion, region, caste, language; and denial of all opportunities and facilities to our own weaker segments of the society; of equality of opportunities and of status to improve excellence in chosen facets of the respective lives. Answer is obviously 'YES;. If we forget the past and repeat the same mistake, we would stand to lose our nation's unity and integrity; stand to lose the opportunity to integrate into the world our great democratic Bharat Republic. Viceregal Lodge teaches us these lessons and it is for all of us individually and collectively, to learn, awake, arise and work for integration, unity and fraternity, which are out fundamental duties.

16. In this backdrop, when the writ petition was filed by way of Public Interest

Litigation, this Court issued rule nisi on November 19, 1990 to all the respondents. Initially, a stand was taken in the counter-affidavit filed by the Union of India that they had decided to use a part of the area for commercial purpose and the rest of the main building to maintain and restore the glory of the Viceregal Lodge. Thus the decision to convert the historical building into a tourist hotel was sought to be justified on the ground that Ministry of Tourism has encouraged a scheme of heritage resorts which essentially means preservation of the old properties and their use is such a limited commercial manner so as to generate enough sources to ensure that the properties will not crumble. As regards the construction of Five Star Hotel in the area, it is stated thus:

> "The premises may not necessarily be converted into a five star hotel as commonly known but the concept plan will be more of a heritage resort, which would enhance and project the cultural identity of the area instead of destroying it."

17. This Court was not satisfied with the counter-affidavit filed on behalf of the Government of India. Therefore, it gave directions on November 24, 1995 to have the matter reconsidered by the Cabinet Sub-Committee. Accordingly, a counter-affidavit was again filed on January 22, 1996 stating that "in August 1982, the Union Cabinet took a decision that the Indian Institute of Advanced Studies which is housed in the Rashtrapati Nivas building should be shifted to some other building in Shimla". It was further stated that "At a subsequent Cabinet Committee meeting held on 8th May, 1990, it was decided that the entire campus earlier known as Viceregal Lodge may be transferred to the Ministry of Tourism for being developed as a major tourist resort by the ITDC with the stipulation that the main building will not be used for tourist purposes. It was also decided that the Institute of Advanced Studies which is housed in the campus of the Rashtrapati Nivas Estate may be shifted to an alternative site offered by the Government of Himachal Pradesh." "In February, 1992 the matter was further discussed by the Committee of Secretaries and the earlier decision was amplified to the effect that the main Viceregal Lodge with a part of the appurtenant land should be preserved and maintained as a national museum and the surrounding land may be handed over the *(sic)*the Ministry of Tourism for Development of a tourist resort." Therefore, it was stated that "It would be unnecessary for the matter to be taken to the Cabinet once again for a decision about the preservation of the main building and the appurtenant land as heritage property". It was also stated that there were "no plans for the development of any part of the Rashtrapati Nivas estate into a five-star hotel complex. No plan for any such purpose has been discussed or finalised nor has any budgetary allocation been made for the said purpose in the Eighth Five Year Plan". The last para itself is a manifest of the intention of the Government that its use in future as a tourist resort had not been ruled out. As a consequence, by Order dated February 27, 1996, this Court stated thus:

> "...the Chief Engineer of the CPWD, Incharge of the maintenance of Viceregal Lodge has brought to the Court ecology album of the entire area. It was stated that around the building, as at present, there is no proposal for construction of tourism hotels, as originally proposed, but there is a direction of the Division Bench of the Shimla High Court directing the Secretary, Human Resources Development and Urban Development should decide as to what is the extent of appurtenant land around the building beyond which the CPWD intends to construct quarters and office building for the employees transferred

and stationed there or which is part of the property leased out to the Institute of Advance Studies."

18. This Court observed that since the Government of India had admitted in the counter-affidavit that the building part of the appurtenant land would be preserved as National Monuments by the Archaeological Department, the question that had arisen was what would be the appurtenant land. The Court was informed that around 65 acres was the land near the main building at the observatory hill and 25 acres of the land was situated elsewhere at prospect hill. This Court indicated to the learned senior counsel for the respondents that the appurtenant land which was kept vacant, as was admitted in their counter-affidavit, should be 25 acres surrounding the entire building. The Court directed that if the said land is used for any other public purpose, like establishment of tourist hotels or office buildings, which was originally proposed and resolved by the Cabinet Resolution, the same should be beyond that area and that too without contravention of the Forest Act and other relevant laws. The counsel sought and was granted time for producing tentative plan proposed by them without touching the appurtenant land. When the matter had come up for next hearing on April 3, 1996 counsel was not present and, therefore, the matter was adjourned indicating that in case of no-appearance, appropriate orders would be passed.

19. A counter-affidavit dated April 26, 1996 was filed on behalf of the Government of India stating therein that a meeting of the Secretary, Department of Urban Development, Secretary, Ministry of Urban Affairs and Employment, Secretary, Department of Education, Ministry of Human Resources Development, Joint Secretary, Department of Tourism, Ministry of Civil Aviation and Tourism and other officials concerned with the matter had met on 22nd March, 1996 and decided as under:

"a) the Appurtenant land around Rashtrapati Niwas (on the Observatory Hill) was agreed to be 24.27 acres. This was determined both from the engineering angle and with a view to protecting the natural surroundings of the Rashtrapati Niwas. It was also agreed that the building of Rashtrapati Niwas and the surrounding appurtenant area will be earmarked as a "heritage area" wherein no construction activity should be permitted or undertaken.

b) In regard to the area outside the heritage area, a master plan would be prepared by the Ministry of Urban Affairs and Employment (department of Urban Development) in consultation with Ministry of Human Resources Development (department of Education), Ministry of Civil Aviation and Tourism (department of Tourism), Ministry of Environment and Forest and concerned local agencies like the Shimla Municipal Corporation. The Town Planning Department and the State Forest Department, so as to ensure that the environment and ecology of the area is preserved and no activity be taken which may endanger the environmental position.

c) In regard to the remaining part of Rashtrapati Nivas Estate (on Prospect Hill) the land could be put to such use as the Government may determine from time to time, subject to the due compliance with the applicable law compliance with the applicable law including the Forest Act, Town Planning Act, Local Municipal Law and others."

20. It was further stated therein that as per the detailed plan of the Rashtrapati Niwas

Estate placed before this Court, the designated boundary of the Rashtrapati Nivas Building with the appurtenant land agreed upon as "heritage area" was shown by a broken line in brown colour. The area therein suggested was 24.27 acres in place of 25 acres, to be preserved with the natural boundaries formed by the roads encircling Rashtrapati Nivas. On May 6, 1997, learned counsel for the petitioner was directed to verify and make a report with regard to the plan submitted and whether any further modification was required. Counter-affidavit accompanied by the reports was filed on behalf of the petitioner stating that the Viceregal Lodge consists of an area of 90 acres which included ancillary buildings that constituted the whole estate of the Viceregal Lodge. The said buildings namely, Corzon House, Del Ville, Clair Villa, Bilaspur House, Bilaspur Cottage and Squires Halla have not been included in the plan submitted by the Government and they were not included within the heritage area. It was also stated that the Viceregal Lodge, as suggested by Intact requires repairs for the upkeep of the said monument and the said building requires to be notified as a protected monument and the memorabilia within the Lodge should be notified as protected antiquities. A report in support was also accordingly filed. As a large part of the building requires repairs, preservation and restoration to their original form, for effectuating the grandeur and beauty of the building, direction was given to look into the objections raised in the enclosed report and the matter was adjourned. After compliance thereof, a report has been submitted demarcating the area and identifying the contiguous land in the plan appended to the report but notification in that behalf had not been issued. Therefore, by proceedings dated August 19, 1996, the Government of India was directed to notify the entire area of the Viceregal Lodge as a protected ancient monument. After several adjournments, ultimately the notification came to be issued on 6th May, 1997 with the boundaries as directed in the orders and mandamus in that behalf stands complied with. Thus, the protection and preservation of Viceregal Lodge and the appurtenant land as historical heritage has become faite accompli by orders of this Court.

21. It is needless to mention that as soon as the Indian Institute of Advance Studies vacates the building and hands it over to the Archaeological Department, the Government should provide the necessary budget for effecting repairs and restoring to the building its natural beauty and grandeur. It is also necessary that its proper maintenance and preservation is undertaken as an on-going process to protect the historical heritage and needed repairs are effected from time to time. We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. They are pride of Indians and places of public visit. The tourist visitors should be properly regulated. Collection of funds by way of admission/entrance fee should be conscientiously accounted for and utilised for their upkeep and maintenance under respect regulations/rules. Adequate annual budgetary provisions should be provided. In this behalf, it may not be out of place to mention that if one goes to Williamsburg in United States of America, the first settlement of the Britishers therein is preserved as a tourist resort and though it is one in the row, its originality is maintained and busying business activity goes in and around the area attracting daily hundreds of tourists from all over the world. Similar places of interest, though of recent origin, need to be preserved and maintained as manifestation of our cultural heritage or historical evidence. Similar efforts should also be made by the Government of India, in particular the Tourism Department, to attract foreign tourists and to give them good account of our past and glory of the people of India as message to other countries and territories. Equally all the State Governments would do well vis-a-vis monuments of State importance, though given power under Entry 12, List II of the Seventh Schedule to the Constitution. From this perspective, the petitioner has served a great cause of national importance and we place on record his effort to have the Viceregal Lodge preserved and maintained; but for his painstaking efforts,, it would have been desecrated into a five Star Hotel and in no time "We, the people of India" would have lost our ancient historical heritage.

22. The writ petition is accordingly disposed of.

SCALE (PIL) 1981-97 1067
GAURAV JAIN *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: K. RAMASWAMY AND D.P. WADHWA, JJ.

PUBLIC INTEREST LITIGATION — CHILDREN OF PROSTITUTES — CONSTITUTION — ARTICLE 21 & 32 — JUVENILE JUSTICE ACT 1986 — Writ Petition seeking establishment of separate educational institutions for the children of prostitutes — Pursuant to the orders of this court, a Committee was constituted to give its suggestions — Held,

(Per K. Ramaswamy, J)

A. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth - cultural, social and economical. All forms of discrimination on ground of gender is violative of fundamental freedoms and human rights. It would, therefore, be imperative to take all steps to prohibit prostitution. Eradication of prostitution in any form is integral to social weal and glory of womenhood. Right of the child to development hinges upon elimination of prostitution. (Para 16)

B. Therefore, it is the duty of the State and all voluntary non- government organisations and public spirited persons to come in to their aid to retrieve them from prostitution, rehabilitate them with a helping hand to lead a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of major avenues in this behalf. Marriage is another object to give them real status in society. Acceptance by the family is also another important input to rekindle the faith of self-respect and self- confidence. Housing, legal aid, free counselling assistance and all

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Order dated July 9, 1997 in W.P. (C) No. 824 of 1988 with W.P. (Crl.) Nos. 745-54 of 1990. [1997(4) SCALE 657] *other similar aids and services are meaningful measures to ensure that unfortunate fallen women do not again fall into the trap of red light area contaminated with foul atmosphere. Law is a social engineer. The courts are part of the State steering by way of judicial review. Judicial statesmanship is required to help regaining social order and stability. (Para 25).*

C. The rescue and rehabilitation of the child prostitutes and children should be kept under the nodal Department, namely, Department of Women and Child Development under the Ministry of Welfare and Human Resource, Government of India. It would devise suitable schemes for proper and effective implementation. The institutional care, thus, would function as an effective rehabilitation scheme in respect of the fallen women or the children of fallen women even if they have crossed the age prescribed under the JJ Act. They should not be left to themselves, but should be rehabilitated through self-employment schemes or such measures as are indicated hereinbefore. The juvenile homes should be used only for a short stay to relieve the child prostitutes and neglected juveniles from the trauma they would have suffered; they need to be rehabilated in the appropriate manner. The details are required to be worked out by meaningful procedure and programmes. In the light of the directions already given by this Court from time to time to the Central Government, State Government and Union Territory administrators, adequate steps should be taken to rescue the prostitutes, child prostitutes and the neglected juveniles as indicated hereinabove; they should take measures to provide them adequate safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by Government of India or State Government concerned. A nodal Committee with the public spirited NGOs, in particular women organisations/woman members should be involved in the management. (Para 46).

D. The Minister of Welfare, Government of India will constitute a Committee consisting of the Secretary in charge of Department of Women and Child Development as the chairperson and three or four Secretaries from the concerned State Governments, to be nominated by the Minister of Welfare. They would make an in-depth study into these problems and evolve such suitable schemes as are appropriate and consistent with the directions given above. The Committee should be constituted within one month from the date of the receipt of this judgment. The Committee should finalise the report within three months thereafter. As soon as the report is submitted, the same may be communicated to all the State Governments and the concerned Ministries for their examination. Within two month from date of the communication, the Minister of Welfare, Government of India, in coordination with the Prime Minister Office should convene a meeting presided over by the Prime Minister, with Minister of Welfare, Home Minister, Human Resource Minister, the concerned Ministers of the State Governments and their Secretaries as well to discuss the problem and take decisions. The Committee should finalise the report with further suggestions or amendments, if suggested in the conference. Thereafter, the report should be finalised and then direction would be given to the State Governments for effective implementation of the schemes. The nodal Department would enforce and regularly be supervised by the Ministry of Welfare, Government of India. A permanent Committee of Secretaries should be constituted to review the progress of the implementation on annual basis, and to take such other steps as may be expedient in the effective implementation of the schemes. Periodical progress as to funding and enforcement of the scheme should *be submitted to the Registry of this Court. (Para 47).*

(Per D.P.Wadhwa, J)

E. The question of eradication of prostitution was not an issue involved in these proceedings or subject matter of the Committee's deliberations. The Committee in its report which runs into over 100 pages has only referred in two paragraphs, while examining target group, as to who are the prostitutes. (Para 59).

F. As to what should be the scheme to be evolved to eradicate prostitution, i.e. the source itself; the basics; and what succour and sustenance can be provided to the fallen victims of flesh trade was not a question agitated in the proceedings. Certainly no one can dispute that evil of prostitution must be curbed. It is the mandate of the Constitution which prohibit traffic in human beings. (Para 59).

PUBLIC INTEREST LITIGATION — SCOPE OF — Power of court to grant relief in such matters — Held,

(Per K. Ramaswamy, J)

G. It would, thus, be the established procedure of this Court under Article 32 that the public interest litigation is not adversorial. It is one of collaboration and cooperation between the State and the Court. This Court as the sentinel on the qui vive, is constitutionally obligated to enforce the fundamental rights of all the citizens of the country and to protect them from exploitation and to provide guidance and direction for facilities and opportunities to them for securing socio-economic justice, empowerment and to free the handicapped persons from the disabilities with which they suffer from and to make them realise and enjoy the fundamental rights ensured to them under the Constitution. In that behalf, this Court is entitled and empowered under Article 32 to adopt such procedure as is expedient in a given fact situation and deal with the matter appropriately. Therefore, the rigour of the pleadings or the reliefs sought for in adversorial litigation, has been softened; new methods, tools and procedures were evolved to meet out justice and to enforce the fundamental rights. Obviously, therefore, when a limited relief to establish separate schools for the children of the fallen women was sought for by the petitioner-Gaurav Jain, this Court did not confine to the same. It, instead, enlarged the scope and directed the authorities as an interim measure to have those children admitted in the general schools to make the children overcome the disabilities had from foul atmosphere and to generate the feeling of oneness and dissegregation. (Para 51).

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 141, 142 & 145(6) — Disagreement between the judges as to directions to be passed in the writ petition — Whether Article 142 can be invoked in such a situation — Held,

(Per K. Ramaswamy, J)

H. This Court being composed of large number of Judges has evolved its own procedure to transact court management of its judicial work and to decide cases/causes sitting in appropriate Division Benches constituted by the Chief Justice of India as per the Supreme Court Rules. Any observation made by one of the Judges has pursuasive obiter. When there is a dissent, the majority of opinion forms a binding precedent. Any difference of opinion between a Bench composed of two Judges, in an adversorial litigation requires resolution by a larger Bench of three Judges and/or if further reference is made to a Constitution Bench, it is to deal with the controversy and majority opinion forms precedent. (Para 52).

I. Article 142 would be used to enforce final judgment or order which, in given special or exceptional circumstances, would include directions of this type to mitigate injustice and to elongate enforcement of fundamental and human rights. Article 142 speaks of doing complete justice in a cause. The arm of the Court is long enough to reach injustice wherever it is found and to meet out justice. Denial of the constitutional rights to the unfortunate fallen women outrages the quest for justice and pragmatism of constitutional ethos which constrain me to avail Article 142 of the Constitution of India to direct the Union of India as well as all State Governments to evolve, after indepth discussion at Ministerial level conference, such procedures and principles or programmes, as indicated in this Order, as guidance would help rescue and rehabilitate the fallen women. (Para 53).

J. Generally, Article 142 may not be invoked before the difference of opinion is resolved in an adversorial litigation and in keenly contested matters of even public interest litigation, in particular, of recent type cases. However, in the cases of the type in hand, where there would be no controversy on human problems of most unfortunate women which require their careful planning, rescue and rehabilitation, the exercise of the power under Article 142, even by a single member of the Bench, may be appropriate and efficacious to enforce fundamental and human rights of large number of neglected and exploited segments of the society. (Para 53).

Referred: Gaurav Jain vs Union of India & Ors [1990 Supp. SCC 709 = 1989 (2) SCALE 1126]; Madhu Kishwar & Ors vs State of Bihar & Ors [1996 (5) SCC 125 = 1996(3) SCALE 640]; Labourers working on Salal Hydro Project vs State of Jammu & Kashmir & Ors [1983 (2) SCC 181 = 1983(1) SCALE 216]; Dr. Upendra Baxi & Ors (II) vs State of U.P. & Ors [1986 (4) SCC 106 = 1986(2) SCALE 146]; Vincent Panikurlangara vs Union of India & Ors [1987 (2) SCC 165 = 1987(1) SCALE 490]; Rural Litigation and Entitlement Kendra vs State of U.P. [1989 Supp. 1 SCC 504 = 1988(2) SCALE 493]; M.C.Mehta & Anr vs Union of India & Ors [1987 (1) SCC 395 = 1986(2) SCALE 1188]; Bandhua Mukti Morcha vs Union of India & Ors [1984 (3) SCC 161 = 1983(2) SCALE 1151]; Santhal Pargana Antyodaya Ashram vs State of Bihar & Ors [1987 Supp. SCC 141 = 1987(1) SCALE 679].

1. "Frailty, thy name is woman", was the ignominy heaped upon women of Victorian Era by William Shakespeare in his great work `Hamlet'. The history of sociology has, however, established the contrary, i.e., `fortitude', thy name is woman; `caress', thy name is woman; `self-sacrifice', thy name is woman; tenacity and successful pursuit, their apathetical is woman. Indira Gandhi, Margaret Thatcher, Srimovo Bhandarnaike and Golda Meir are few illustrious women having proved successful in democratic governance of the respective democratic States. Amidst them, still, a class of women is trapped as victims of circumstances, unfounded social sanctions, handicaps and coercive forms in the flesh trade, optimised as `prostitutes', (for short, `fallen women'). Seeking their redemptions, a few enlightened segments are tapping the doors of this Court under Article 32 of the Constitution, through a public spirited advocate, Gaurav Jain who filed, on their behalf, the main writ petitions claiming that right to be free citizens; right not to be trapped again; readjusted by economic empowerment, social justice and self-sustenance thereby with equality of status, dignity of person in truth and reality and social integration in the mainstream are their *magna carta.* An article "A Red light trap: Society gives no chance to prostitutes' offspring" in `India Today' dated July 11, 1988 is founded as source material and has done yeoman's service to ignite the sensitivity of Gaurav to seek improvement of the plight of the unfortunate fallen women and their progeny. Though Gaurav had asked for establishing separate educational institutions for the children of the fallen women, this Court after hearing all the State Governments and Union Territories which were then represented through their respective standing counsel, observed on November 15, 1989 in *Gaurav Jain vs. Union of India & Ors.* [1990 Supp. SCC 709] that "segregating children of prostitutes by locating separate schools and providing separate hostels" would not be in the interest of the children and the society at large. This Court directed that they "should be segregated from their mothers and be allowed to mingle with others and become a part of the society". Accepting the suggestion from the Bar and rejecting the limited prayer of the petitioner, this Court had ordered that "Children of prostitutes should, however, not be permitted to leave in inferno and the undesirable surroundings of prostitute homes". This was felt particularly so in the case of young girls whose body and mind are likely to be abused with growing age for being admitted into the profession of their mothers. While this Court did not accept the plea for separate hostels for children of prostitutes, it felt that "accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified". In that view, instead of disposing of the writ petition with a set of directions, this Court constituted a Committee comprising S/Shri V.C. Mahajan, R.K. Jain, Senior Advocates and others including M.N. Shroff, Advocate, as its Convenor, and other individuals named in the Order; the Court directed the Committee to submit its report giving suggestions for appropriate action. Accordingly, the report was submitted. Arguments were heard and judgment was reserved but could not be delivered. Resultantly, it was released from judgment. We have re-heard the counsel on both sides. The primary question in this case is: what are the rights of the children of fallen women, the modules to segregate them from their mothers and others so as to give them protection, care and rehabilitation in the mainstream of the national life? And as a facet of it, what should be the scheme to be evolved to eradicate prostitution, i.e., the source itself; and what succour and sustenance can be provided to the fallen victims of flesh trade? These are primary questions we angulate for consideration in this public interest litigation.

2. The Preamble, an integral part of the Constitution, pledges to secure 'socio-economic justice' to all its citizens with stated liberties, 'equality of status and of opportunity', assuring 'fraternity' and 'dignity' of the individual in a united and integrated Bharat. The fallen women too are part of citizenry. Prostitution in society has not been an unknown phenomenon; it is of ancient origin and has its manifestation in various forms with varied degrees unfounded on so-called social sanctions etc. The victims of the trap are the poor, illiterate and ignorant sections of the society and are the target group in the flesh trade; rich communities exploit them and harvest at their misery and ignominy in an organised gangsterims, in particular, with police nexus. It is of grave social concern, increasingly realised by enlightened public spirited sections of the society to prevent gender exploitation of girl children. The prostitute has always been an object and was never seen as complete human being with dignity of person; as if she has had no needs and aspirations of her own, individually or collectively. Their problems are compounded by coercion laid around them and tortuous treatment meted out to them. When they make attempts either to resist the prostitution or to relieve themselves from the trap, they succumb to the violent treatment and resultantly many a one settle for prostitution. Prostitute is equally a human being. Despite that trap, she is confronted with the problems to bear and rear the children. The limitations of trade confront them in bringing up their children, be it male or female. Their children are equally subjected to inhuman treatment by managers of brothels and are subjected to discrimination, social isolation; they are deprived of their right to live normal life for no fault of their own. In recent times, however, there has been a growing body of opinion, by certain enlightened sections of the society advocating the need to no longer treat the fallen women as a criminals or as an object of shocking sexual abuse; they are victims of circumstances and hence should be treated as human beings like others, so as to bring them into the mainstream of the social order without any attached stigma. Equally, they realise the need to keep their children away from the red light area, particularly girl children and have them inducted into respectable and meaningful avocations and/or self-employment schemes. In no circumstances, they should continue to be in the trap of flesh trade for commercial exploitation. They need to be treated with humanity and compassion so as to integrate them into the social mainstream. If given equal opportunity, they would be able to play their own part for peaceful rehabilitation, live a life with happiness purposefully, with meaningful right to life, culturally, socially and economically with equality of status and dignity of person. These constitutional and human rights to the victims of fallen track of flesh trade, need care and consideration of the society. This case calls upon to resolve that human problem with cares and purposeful guidelines, lend help to ameliorate their socio-economic conditions, eradicate social stigma and to make available to them equal opportunities for the social order.

3. Equally, the right of the child is the concern of the society so that fallen women surpass trafficking of her person from exploitation; contribute to bring up her children; live a life with dignity; and not to continue in the foul social environment. Equally, the children have the right to equality of opportunity, dignity and care, protection and rehabilitation by the society with both hand open to bring them into the mainstream of social life without pre-stigma affixed on them for no fault of her/his. The Convention on the Right of the Child, the Fundamental Rights in Part III of the Constitution, Universal Declaration of Human Rights, the Directive Principles of the State Policy are equally made available and made meaningful instruments and means to ameliorate their conditions - social, educational, economical and cultural, and to bring them into the social stream by giving the same opportunities as had by other children. Thus, this case calls for a careful and meaningful consideration with diverse perspectives, to decide the problems in the light of constitutional and human rights and directions given to the executive to effectuate them on administrative side effectively so that those rights become real and meaningful to them.

4. Let us, therefore, first consider the right of the fallen women and their children given by the Constitution and the Directive Principles, the Human Rights and the Convention on the Right of Child, before considering the social ignominy attached to them and before looking for the remedy to relieve them from the agony and make them equal participants in normal social order. Article 14 provides for equality in general. Article 21 guarantees right to life and liberty. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place

of birth, or of any of them. Article 15(3) provides for special protective discrimination in favour of woman and child relieving them from the moribund of formal equality. It states that "nothing in this article shall prevent the State from making any special provision for women and children". Article 16(1) covers equality of opportunity in matters of public employment. Article 23 prohibits traffic in human beings and forced labour and makes it punishable under Suppression of Immoral Traffic in Women and Girls Act, 1956 which is renamed in 1990 as the Immoral Traffic (Prohibition) Act (for short, the `ITP Act'). Article 24 prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age.

5. Article 38 enjoins the State to secure and protect, as effectively as it may, a social order in which justice - social, economic and political, shall inform all the institutions of national life. It enjoins, by appropriate statutory or administrative actions, that the State should minimise the inequalities in status and provide facilities and opportunities to make equal results. Article 39(f) provides that the children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 46 directs the State to promote the educational and economic interests of the women and weaker sections of the people and that it shall protect them from social justice and all forms of exploitation. Article 45 makes provision for free and compulsory education for children, which is now well settled as a fundamental right to the children upto the age of 14 years; it also mandates that facilities and opportunities for higher educational avenues be provided to them. The social justice and economic empowerment are firmly held as fundamental rights of every citizen.

6. Article 1 of the Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2 provides that everyone, which includes fallen women and their children, is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 provides that everyone has the right to life, liberty and security of person. Article 4 enjoins that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. The fallen victims in the flesh trade is no less than a slave trade. Article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The fallen/trapped victims of flesh trade are subjected to cruel, inhuman and degrading treatment which are obnoxious, abominable and an affront to Article 5 of the Universal Declaration and Article 21 of the Indian Constitution.

7. Equally, Article 6 declares that everyone has the right to recognition everywhere as a person before the law. The victims of flesh trade are equally entitled before the law to the recognition as equal citizens with equal status and dignity in the society. Article 7 postulates that all are equal before the law and are entitled, without discrimination, to equal protection of the law. So, denial of equality of the rights and opportunities and of dignity and of the right to equal protection against any discrimination of fallen women is violation of the Universal Declaration under Article 7 and Article 14 of the Indian Constitution.

8. Article 8 of the Universal Declaration provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or the law. The Supreme Court of India, which is the sentinel in the *qui vive,* is enjoined to protect equally the rights of the poor, the deprived, the degraded women and children trapped in the flesh trade, kept in inhumane and degrading conditions, and to grant them the constitutional right to freedoms, protection, rehabilitation and treatment by the social engineering, in law, Constitution and appropriate administrative measures so as to enable them to work hand-in-hand to live life with dignity and without any stigma due to their past conduct tagged to them by social conditions, unfounded customs and circumstances which have become blot on the victims and their children. They too are entitled to full equality, fair and adequate facilities and opportunities to develop their personality with fully grown potentiality, to improve their excellence in every walk of life. Article 51-A of the Constitution enjoins duty on every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform and to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

9. Preamble to the Declaration of the Right of the Child adopted by the UNO on November 20, 1959, provides that the child by reason of his or her physical or mental immaturity, needs special safeguards and care including her appropriate legal protection before as well as after birth. Recalling the provisions of Declaration on Social and Legal Principles relating to Protection and Welfare of the Children with Special Reference to Foster or Placement and Adoption Nationally and Internationally; the General Assembly Resolution 41/85 of December 3, 1986; the United Nations adopted Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) dated November 29, 1985. India is a signatory to the Declaration and has the same and effectively participated in bringing the Declaration in force. Article 3(1) postulates that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration. Article 3(2) enjoins to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally and all the appropriate measures in that behalf shall be taken by the State. Article 3(3) postulates that State shall ensure the availability of institutional services and facilities responsible for the care or protection of children, shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their self as well as competent supervision. Article 4 obligates by appropriate legislative, administrative or other measures, implementation of the rights recognised in the Convention. The State has undertaken to implement economic, social and cultural rights, such measures to the maximum extent of the available resources and where needed within the framework of international co-operation.

10. Article 6 postulates that State Parties recognise that every child has the inherent right to life which is already granted by Article 21 of the Constitution of India which has been interpreted expansively by this Court to make the right to life meaningful, socially, culturally, economically, even to the deprived segments of the society with dignity of person and in pursuit of happiness. Article 6(2) enjoins to ensure development of the child and Article 7(2) postulates that the State shall ensure implementation of these rights in accordance with law and their obligations. Article 9(3) envisages that the State shall respect the right of the child who is separated from her parents to maintain personal relations and contact with her parents on regular basis. Article 14(2) provides that the State shall respect the rights and duties of the parents, and when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. Article 17(2)(e) enjoins the State to encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being bearing in mind the provisions of Articles 13 and 18. Article 18(1) provides that the State shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents and State have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. Sub-para (2) postulates that for promoting the rights set forth in this Convention, parents, legal guardian or the State in the performance of their child-rearing responsibilities, shall ensure the development of institutions, facilities and services for the care of children.

11. Article 19(1) provides that the State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, mal-treatment or exploitation including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child. Equally, sub-para (2) of Article 19 postulates protective measures, as may be appropriate, should include effective procedure for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child as well as for other forms of prevention etc. Article 20 which is material for the purpose postulates as under:

> "1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
>
> 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
>
> 3. Such care could include, inter alia, foster placement, Kafala or Islamic Law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethic, religious cultural and linguistic background."

12. Article 28 recognises the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, the State shall in particular: (a) make primary education compulsory and available free to all; (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) make higher education accessible to all on the basis of capacity by every appropriate means; (d) make educational and vocational information and guidance available and accessible to all children; and (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates. Article 29 envisages that the State Parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, his or her own cultural identity, languages and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and (e) the development of respect for the natural environment.

13. Article 32 recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Articles 34, 36 and 37(a) are equally relevant and read as under:

> "34. State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
>
> (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
>
> (b) the exploitative use of children in prostitution or other unlawful sexual practices;
>
> (c) the exploitative use of children in pornographic performances and materials.
>
> 36. States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.
>
> 37. State Parties shall ensure that:
>
> (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment or life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;"

14. Article 8 of the Declaration on the Right to Development provides that the State shall undertake at the national level, all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injuries.

15. The Convention on the Elimination Of All Forms of Discrimination Against Women, 1979 enjoins by Article 1, prohibition of discrimination of women. Article 5 enjoins to modify social and patterns of conduct of men and women with a view to achieving elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotyped roles for men and women. Article 12 prescribes discrimination against women in the field of health care in order to ensure on the basis of equality of men and women, access to health care services, including those related to family planning. Article 13 prescribes discrimination and directs that the State Parties shall eliminate discrimination against women in other areas of economic and social life in order to ensure on the basis of equality of men and women, the same rights, in particular, the right to family benefits, the right to participate in recreational activities, sports and all aspects of cultural life. Article 16(d) enjoins the State to ensure on the basis of equality of men and women, the same rights and responsibility as parties, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount. In *Madhu Kishwar & Ors. vs. State of Bihar & Ors.* [(1996) 5 SCC 125], this Court considered the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and held the same to be integral scheme of the Fundamental Rights and the Directive Principles. Article 2(e) of CEDAW enjoins the State Parties to breathe life into the dry bones of the Constitution, international Conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2(f) read with Articles 3, 14 and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights Act. Section 12 of the Protection of Human Rights Act charges the National Commission with duty to ensure proper implementation as well as prevention of violation of human rights and fundamental freedoms.

16. Human Rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth - cultural, social and economical. All forms of discrimination on ground of gender is violative of fundamental freedoms and human rights. It would, therefore, be imperative to take all steps to prohibit prostitution. Eradication of prostitution in any form is integral to social weal and glory of womenhood. Right of the child to development hinges upon elimination of prostitution. Success lies upon effective measures to eradicate root and branch of prostitution.

17. Section 2 (a) of the Immoral Traffic (Prevention) Act, 1956 (for short, the 'ITP Act') defines 'brothel' to mean any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purpose of sexual exploitation or abuse, for the gain of another person or for the mutual gain of two or more prostitutes. The essential ingredient, therefore, is a place being used for the purpose of sexual exploitation or abuse. The phrase 'for the purpose of' indicates that the place being used for the purpose of the prostitution may be a brothel provided a person uses the place and ask for girls, where the person is shown girls to select from and where one does engage or offer her body for promisuous sexual intercourse for hire. In order to establish prostitution, evidence of more than one customer is not always necessary. All that is essential to prove is that a girl/lady should be a person offering her body for promiscuous sexual intercourse for hire. Sexual intercourse is not an essential ingredient. The inference of prostitution would be drawn from diverse circumstances established in a case. Sexuality has got to be established but that does not require the evidence of more than one customer and no evidence of actual intercourse should be adduced or proved. It is not necessary that there should be repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel and the person alleged was so keeping it. The prosecution has to prove only that in a premises a female indulges in the act of offering her body for promiscuous sexual intercourse for hire. On proof thereof, it becomes a brothel.

18. The Juvenile Justices Act, 1986 (for short, the 'JJ Act') was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. The pre-existing law was found inadequate to tie over social knowledge, instrument, delinquency or improvement of the child. The Act sought to achieve a uniform legal framework for juvenile justice in the country as a whole so as to ensure that no child, in any circumstance, is lodged in jail and police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile courts to deal adequately with the subject. The object of the Act, therefore, is to provide specialised approach towards the delinquent or neglected juvenile to prevent recurrence of juvenile delinquency in its full range keeping in view the developmental needs of the child found in the situation of social maladjustment. That aim is secured by establishing observation homes, juvenile houses, juvenile homes or neglected juvenile and special homes for delinquent or neglected juveniles. The JJ Act is consistent with the right of the child to development; the established norms and standards for the administration of juvenile justice and special mode of investigation, prosecution, adjudication and disposition of the juvenile. The JJ Act provides for care, treatment and rehabilitation by developing appropriate linkage and co-operation between formal system of juvenile justice and voluntary agencies engaged in the welfare of the neglected or socially mal-adjusted children; it specifically defines the areas of the responsibilities etc. Section 2(a) defines 'begging'. Section 2(b) defines 'Board' to mean a Juvenile Welfare Board constituted under Section 4. Terms 'Brothel', 'prostitute', 'prostitution' and '‘public place' have been adopted as defined in ITP Act. 'Competent authority' or 'Juvenile court' as the case may be, is defined under Section 2(d). Section 2(f) defines 'fit person' or 'fit institution' to mean any person or institution (not being a police station or jail) found fit by the competent authority to receive and take care of a juvenile entrusted to his or its care and protection on the terms and conditions specified by the competent authority. 'Guardian' in relation to a Juvenile has been defined under Section 2(g). 'Juvenile' has been defined under Section 2(h) to mean a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. 'Juvenile Court' and 'Juvenile Home' have been defined in Section 2(i) and 2(j) respectively. 'Neglected juvenile which is more relevant for the purpose of this case, has been defined in Section 2(1) to mean a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitution or any other person who leads an immoral, drunken or depraved life; (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. 'Prostitution' means the sexual exploitation or abuse of persons for commercial purposes and the expression 'prostitute' shall be construed as it is defined under Section 2(f) of ITP Act. After the amendment to the ITP Act, 'prostitution' means sexual exploitation or abuse of person for commercial purpose.

19. Therefore, prostitution is not confined, as in the ITP Act, to offering of the body to a person for promiscuous sexual intercourse. Normally, the word 'prostitution' means an act of promiscuous sexual intercourse for hire or offer or agreement to perform an act of sexual intercourse or any unlawful sexual act for hire as was the connotation of the Act. It has been brought within its frame, by amendment, the act of a female and exploitation of her person by an act or process of exploitation for commercial purpose making use of or working up for exploitation of the person of the women taking unjust and unlawful advantage of trapped women for one's benefit or sexual intercourse. The word 'abuse' has a very wide meaning everything which is contrary to good order established by usage amounts to abuse. Physical or mental mal-treatment also is an abuse. An injury to genital organs in an attempt of sexual intercourse also amounts to sexual abuse. Any injury to private parts of a girl constitutes abuse under the JJ Act. 'Public place' means any place intended for use by, or accessible to the public and includes any public conveyance. It is not necessary that it must be public property. Even if it is a private property, it is sufficient that the place is accessible to the public. It must be a place to which the public, in fact, resorts or frequents.

20. The Probation Officer is kept in-charge for enforcement of the provisions of the Act. Section 4 of the JJ Act deals with 'Juvenile Welfare Boards' under Chapter III titled 'Competent Authority and Institutions for Juvenile'. It postulates that the State Government by official notification may constitute for any area specified in the notification, one or more Juvenile Welfare Boards for exercising the powers and discharging the duties conferred or imposed on such Board in relation to neglected juveniles under the JJ Act. The powers of the Juvenile Courts, defined in Section 5, have been reiterated in Section 7. Section 9 deals with 'Juvenile homes'. It enjoins the State Government to establish and maintain as many juvenile homes as may be necessary for the reception of neglected juveniles under the JJ Act. Every juvenile home to which a neglected juvenile is sent under the JJ Act shall not only provide the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation, but also to provide him, with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral danger or exploitation and shall also perform such other functions as may be prescribed to ensure all-round growth and development of his personality. Sections 10 and 11 deal with establishment of special or observation homes for delinquent juveniles, details of which need no elaboration. Section 12 touches upon the need for After-care organisations. Under Section 13 in Chapter III, if any police officer or any other person or organisation authorised by the State Government in this behalf, by general or special order, is of opinion that a person is apparently a neglected juvenile, such police officer or other person or organisation may take charge of that person for bringing him before a Board for rehabilitation, care and protection of the child. Section 14 deals with special procedure to be followed when neglected juvenile has parents. Section 15 regulates inquiry regarding the neglected juvenile, the details of which are not material. The question, therefore, is: what procedure is efficacious to prevent prostitution, bring the fallen women and their children into the social mainstream by giving care, protection and rehabilitation?

21. Three Cs, viz., counselling, cajoling and coersion are necessary to effectively enforce the provisions of ITP Act and JJ Act. By Order dated May 2, 1990, this Court, after hearing the counsel, passed an order to set up an Advisory Committee to make suggestions for eradicating child prostitution and to point out social aspects for the care, protection, treatment, development and rehabilitation of the young victims, children and girls prostitutes from red light area and get them free from the abuses of prostitution; to amend the existing law or to enact a new law, if so warranted; to prevent sexual exploitation of children and to take various measures for effective enforcement thereof. It is seen that the Committee constituted by this Court under the chairmanship of Shri V.C. Mahajan travelled far and wide to have a look into the field of operation of the governmental agencies and has suggested nodal programme for the eradication of the twin facets of prostitution, viz., protection, care and rehabilitation of the fallen women and neglected juveniles. The Committee has opined that the problem of child prostitution does not stand by itself and is a component of overall phenomenon in the country. It highly concentrates on identified red light areas as well as on areas which are not so clearly identified. Though the problem of prostitution is mainly found in large cities, but in the urban areas and some rural areas, the problem gives frequent recurrence. Among the fallen women, the child prostitutes constitute major bulk of the component. Child prostitutes constitute 12 to 15% of prostitutes in any area. On account of the social sanctions, women are exploited by the monsterous customs of Devdasis, Jogins and Venkatansis known by other names in different parts of the country. The unfounded social and religion based sanctions are only camouflage; their real motive is to exploit the unfortunate women. Most of them belong either to Scheduled Castes or Backward Classes coming from socio-economically lower groups. They are prevalent highly in Karnataka, Maharashtra and Andhra Pradesh. The specific areas in major cities are identified as red light areas as well as some semi-urban but rural areas. The number of red light areas having increased in recent times, brothel based prostitution is on the vane but there is an increasing trend towards decentralised mode of prostitution. 86% of the fallen women hail from Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Bihar, Maharashtra, Uttar Pradesh, Assam, Gujarat, Goa, Madhya Pradesh, Kerala, Meghalaya, Orissa, Punjab, Rajasthan and Delhi. Delhi receives prostitutes from about 70 districts in the country; Bombay from 40 districts; Bangalore from 70 districts; Calcutta from 11 districts, Hyderabad from 3 districts etc. There is growing evidence that the minimum number of prostitutes get into flesh trade either voluntarily or by organised gangster force women and girls by offering rosy future to innocent fallen women and trap them often with the connivance of the police.

22. The Committee has also identified ten types of prostitutes like Street walkers, religious prostitutes, prostitutes in brothel, singing and dancing girls, bar nude, massage parlour and some are call girls. Comprehensive study conducted by another Committee in six metropolitan cities, viz., Delhi, Bombay, Calcutta, Madras, Hyderabad and Bangalore, reveals the age group of the prostitutes below 20 years of age are 75%, 21 to 30 years are 40%, 30 to 35 years are 18% and above 35 years 12%. At the time of induction into the prostitution, 9% are below 15 years; 24.9% between 16 to 13 years, 27.7% between 19 to 21 years; and 32.9% are above 22 years. At the time of entry, therefore, 15% of the fallen girls are in the category of neglected juveniles, about 25% are minors between the age group of 16 to 18 years. The major reasons for induction of prostitution are poverty and unemployment or lack of appropriate rehabilitation etc. *All abhore social stigma; 16% due to family tradition and 9% due to illiteracy.* 94.6% prostitutes are Indians while 2.6% are Nepalis and 2.7% are Bangladeshis. 84.36% are Hindus; 10.9% are Muslims and 3.5% are Christians. In terms of caste classification, Dalits and Tribes constitute 36%, Other Backward Classes 24% and others 40%. In terms of marital status, only 10.6% of the prostitutes are married; 34.4% are unmarried and 54.2% are divorcee or widows. In terms of education level; 70% of them are illiterates while 4% only are literates. Only 24% of the prostitutes are educated at primary and secondary level while 1.4% have higher qualifications. Therefore, prostitution is primarily due to ignorance illiteracy, coersive trapping or scare of social stigma. In India, they enter into the prostitution between the age of 16 to 19 years and lose market by the time they became 35 years of age. Thereafter such persons either manage brothels or develop contact with high leads. Recent trend is that ladies from higher levels of income are initiated into the prostitution to sustain sufficient day-to-day luxurious style of life so as to ensure continuous economic support for their well-being.

23. The Mahajan Committee report indicates that in two villages in Bihar and some village in West Bengal, parents send their girl children to earn in prostitution and the girls in turn send their earnings for maintenance of their families. It further indicates that certain social organisations have identified the poverty as the cause for sending the children for prostitution in expectation of regular remittance of income from prostitution by the girls who have already gone into the brothels. It is also an inevitable consequence that over years the fallen women are accustomed to certain life-style and in terms of expenditure they need certain amount of money for their upkeep and maintenance. When they bear children, it becomes additional burden for them. They are led or caught in the debt traps. The managers of the brothel are generally ladies. They do not allow the girls to bear children. In case of birth against their wishes, the unfortunate are subjected to cruelty in diverse forms. In the process of maintaining the children, again they land themselves in perpetually growing burden of debt without any scope to get out from the bondage. Thereby, this process lends perpetuality to slavery to the wile of prostitution. To support their children for education etc. 44% of them desire to leave the red light traps and 43% of them express their despondence languishing between hope and despair. Most of those who want to leave, have given the reasons to save their children from prostitution and protection of the future of their children, fear of contacting the venerial diseases, the fear of their children following the path; some of them expressed dislike for the profession, social stigma and their yearning is to start new life. Those who want to remain in prostitution have given absence of alternatives source of income, their social non-acceptability, family customs, property, ill-health and their despondence as the reasons and, thus, they want to continue in the prostitution as the last resort for their livelihood. They do not like to remain in red light area and the profession but lack of alternative source of livelihood is the prime cause of their continuation in the profession.

24. If alternatives are available and society is inclined to receive them, they will gladly shed off their past and start with a clean slate as a fresh lease of life with renewed vigourous hope and aspiration to live a normal life, with dignity of person; respect for the personality, equality of status; crave for fraternity and acceptability in the social mainstream. Therefore, it would be imperative to provide a permanent cure to the malady. There would be transition from the liberation from the prostitution to start with fresh lease of life. This period should be taken care of by providing behavioural corrections by constant interaction, counselling, cajoling and coercion as the last resort for assurance of social acceptability inculcating faith in them. An avenue to earn sufficient income for rehabilitation rekindles their resolve to start with fresh lease of life, without which their craving to shed off the past and to start with a new lease of life would remain a distant dream and a futile attempt. Therefore, the rubicon has to be bridged between the past and the hope to make them realise their desire as normal citizenry, by providing opportunity and facilities. Provision of opportunities and facilities is input of the constitutional guarantee to the disadvantaged, deprived and denied people. The directive principles of the Constitution, in particular Articles 38, 39, and all relevant related Articles enjoin the State to provide them as impregnable inbuilt right to life guaranteed by Article 21 and equality of opportunities with protective discrimination guaranteed in Article 14 the genus and its species, Articles 15 and 16 and the Preamble, the arch of the Constitution by legislative and administrative measures.

25. Therefore, it is the duty of the State and all voluntary non-government organisations and public spirited persons to come in to their aid to retrieve them from prostitution, rehabilitate them with a helping hand to lead a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of major avenues in this behalf. Marriage is another object to give them real status in society. Acceptance by the family is also another important input to rekindle the faith of self-respect and self-confidence. Housing, legal aid, free counselling assistance and all other similar aids and services are meaningful measures to ensure that unfortunate fallen women do not again fall into the trap of red light area contaminated with foul atmosphere. Law is a social engineer. The courts are part of the State steering by way of judicial review. Judicial statesmanship is required to help regaining social order and stability. Interpretation is effective armoury in its bow to steer clear the social malady, economic reorganisation as effective instruments remove disunity, and prevent frustration of the disadvantaged, deprived and dealed social segments in the efficacy of law, and pragmatic direction pave way for social stability peace and order. This process sustains faith of the people in rule of law and the democracy becomes useful means to the common man to realise his meaningful right to life guaranteed by Article 21.

26. V.C. Mahajan Report States that an organisation by name Prerana, selected Kamathipura red light area, Bombay, where 14 lanes are in the occupation of the Managers of the brothels and has located a centre for counselling. Therein, they organise regular counselling and service centre for the fallen women and do work for the children. The national plan of action for the girl child in the SAARC Decade of the Girl Child (1991-2000) was launched as a project for the welfare and development of the girl children including adolescent girls and street children in particular. An inter-departmental monitoring committee was also set up under this plan in some of the red light areas. The provisions of Integrated Child Development Services Scheme were extended. A number of voluntary agencies have also been involved in the care, rehabilitation and advocacy to retrieve prostitutes including child prostitutes. The rehabilitation and welfare organisation is to be initiated.

27. Women found in the flesh trade, should be viewed more as victims of adverse socio-economic circumstances rather than as offenders in our society. Prostitution in five star hotels is a licence given to persons from higher echelons. The commercial exploitation of sex may be regarded as crime but those trapped in custom oriented prostitution and gender oriented prostitution should be viewed as victims of gender oriented vulnerability. That could be arrested by not only law enforcing agencies but by constant counselling and interaction by the NGOs impressing upon them the need to shed off the path and to start with a new lease of life. The ground realities should be tapped with meaningful action imperatives, apart from the administrative action which aims at arresting immoral traffic of women under ITP Act through inter-State or interpol arrangements and the nodal agency like the CBI is charged to investigate and prevent such crimes. We are concerned in this case more with the rehabilitation aspect than with prevention of the crime. Therefore, we emphasise on the review of the relevant law in this behalf, effective implementation of the scheme to provide self-employment, training in weaving, knitting, painting and other meaningful programmes to provide the fallen women the regular source of income by self-employment or, after vocational education, the appropriate employment generating schemes in governmental, semi-governmental or private organisations.

28. The customary initiation of women in the practice of Devdasi Jogins and Venkatasins is prevalent in Andhra Pradesh, Karnataka and Maharashtra areas; in particular the practice of prostitution is notorious. It is an affront to the human dignity and self-respect but the pursuit of customary beliefs traps the fair sex into this glorified self-sacrifice and ultimately leads to prostitution service in the temples and charitable institutions etc. which is a crime against humanity, violation of human rights and obnoxious to Constitution and Human Rights Act. They are void under Article 13 of the Constitution of India and punishable under the law. They are anti-thetical to the Constitutional scheme. Fundamentalists and proponents of these practices are constitutional criminals. The unfounded customs cannot have legal sanction. On the other hand, penal enactments provide for abolition thereof. Instead of progressive outlook, regressive unfortunate tendency, of late, is raising its ugly head to glorify these ignominous practices which is leading not only to abetment of commission of the crime, but also misleading the unfortunate illiterate and weaker sections of the society, to be taken in seriously by the latter by their false promises or false theories such as God's ordain which finds easy acceptance by the poor and illiterate and is acted upon. Every right thinking person should condemn such attempts apart from keeping and helping strict implementation of the law prohibiting initiation of the nastry practice wherein the eldest girl child in particular families, is offerred as Devadasi or Jogin or Venkatasin, by whatever local name they are called. They are making the lives of the girl miserable; in the guise of prosperous future and customs, the girl is detained in prostitution for no fault of her. This is prevalent in particular in six districts of Karnataka, viz., Raichur, Bijapur, Belgaum, Dharwar, Bellary and Gulbarga where their number is identified as 21,306. In Andhra Pradesh, in five districts, namely, Medak, Karimnagar, Nizamabad, Nalgonda and Warangal, such girls are known as Jogins. Nizamabad District has the largest number of Jogins As per the survey conducted in 1996, as many as 16,300 Jogins were found in that State. Similarly, in Maharashtra, they are found in large number, in particular in Marathawada and Vidarba regions. The common features of such women is that predominently they are from Scheduled Castes, Scheduled Tribes and other Backward

Classes. The eldest girl in every family is being offered as Devadasi, Jogin or Venkatasin. Sometimes, they do redeem the pledge made to the Gods or Goddesses, etc. Original families of these Devadasis, Jogins or venkatasins were by and large poor. They are primarily agricultural labourers having no access to credit facilities or literacy. The eldest girl in each family is driven to prostitution. The system has been in existence for years as a result of lack of awareness about the exploited segments of the Devadasis etc. Many families which dedicate their girls, do so due to the pursuit of customary practices.

29. Economic rehabilitation is one of the factors that prevent the practice of dedication of the young girls to the prostitution as Devadasis, Jogins or Venkatasins. Their economic empowerment and education gives resistance to such exploitation; however, economic programmes are necessary to rehabilitate such victims of customs or practices. They are being rehabilitated with the help of vocational training centres set up in Maharashtra giving preferential admission into educational training institutes; they are admitted into informal adult education. In Maharashtra, educational training centres have been opened for devadasis. In Karnataka, Devadasi women have been assisted under DWCRA schemes in various districts, in particular six district, where an extensive devadasi rehabilitation programme is in full force. The Karnataka State Women's Development Corporation and the Karnataka State Scheduled Castes and Scheduled Tribe Development Corporation are implementing this programme in the aforesaid six districts where the phenomenan of devadasi system is being observed; training is imparted in hand-weaving, 50% subsidy is given in weaving; good work-shed is given to them free of costs; income assistance like micro-business enterprises, rope and basket making etc. are being provided to devadasi women for rehabilitating them. Training in production of soap, chalk making Khadi and weaving activities is being imparted in Andhra Pradesh. Karnataka State also has taken the lead in forming self-helping group of devadasis; a thrift and saving programme is being implemented in some areas. Social Welfare Departments should undertake these rehabilitation programmes for the fallen victims of social practice so that the foul practice is totally eradicated and the fallen women are redeemed from the plight and are not again trapped into the prostitution. In Andhra Pradesh, the State Government is providing housing sites or house facilities to devadasi women; they are getting free treatment in hospitals. Devadasi women aged about 60 years and above are being given pension. In order to improve literacy, adult literacy programmes are being organised for them. The NGOs in these three States are playing important role in implementation of various programmes and they are largely concentrating on generating awareness among these persons and their economic rehabilitation. It would, therefore, be meaningful if rehabilitation programmes are launched and implementation machinery is set not only to eradicate the fertile source of prostitution but also for successful rehabilitation of the fallen women who are the victims of circumstances to regain their lost respect to the dignity of person to sustain equality of status, economic and their social empowerment.

30. Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and co-operation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning the children, excluding good foundation of life for them, is a crime against humanity. The children cannot wait till tomorrow; they grow everyday; along with them grows their sense of awareness about the surroundings. Tomorrow is no answer; the goal of their present care, protection and rehabilitation is the need of the hour. We have already dealt with the rights assured to them by the Constitution, the Directive Principles and the Convention on the Right of the Child. The United Nations Declaration on the Rights of the Child made on November 20, 1959, has formulated and given 10 principles in that behalf. Principle No. 1 provides that the child shall enjoy all the rights set fourth in the Declaration. All children, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether himself or of his family. Principle No.2 postulates that the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. Principle No.3 postulates that the child shall be entitled from his birth to a name and a nationality. Principle No.4 postulates among other things that the child shall enjoy the benefits of the social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided to him. Principle No.5 provides that the child who is physically,mentally or *social handicapped* shall be given special treatment, education and care required by that particular condition. *This is more relevant for the purpose of this case.* Principle 6 postulates that the child for the full and harmonious development of his personality, needs love and understanding. A child of tender years shall not, save in exceptional circumstances, be separated from his/her mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State*(sic)* and other assistance towards the maintenance of children of large families is desirable.

31. Principle No.7 provides that the child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He/She shall be given an education which will promote his/her general culture, and enable him/her on a basis of equal opportunity to develop his/her abilities, his/her individual judgment, and his/her sense of moral and social responsibility and *to become a useful member of the society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance, that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society; and the public authorities shall endeavour to promote the enjoyment of this right.* Principle No.8 postulates that *the child shall in all circumstances be among the first to receive protection and relief.* Principle 9 is *most important* in this behalf which provides that *the child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.* Principle No.10 postulates that *the child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood and in full consciousness that his* *energy and fallates should be devoted to the service of his fellow men.*

(Emphasis supplied)

32. The Government of India has adopted the National Policy for Children by Resolution No.1-14/74-CDD dated August 22, 1974. The main purpose of the policy is that the nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by the society. They participate in equal measure in democratic governance of the State as useful citizens. Equal opportunities for development to all children during the period of growth should be our aim; for this we would serve our larger purpose of reducing inequality and ensuring social justice. To care for, plan out needs of the children and successful implementation is, therefore, our duty, as citizen, be an administrator, a Magistrate or a Judge.

33. Among the diverse programmes, Programme No.4 of India for children postulates that the children of the weaker sections of the society need special protection. The programme of informal education for pre-school children from such sections will also be taken up. Programme No.5 postulates that children who are not able to take full advantage of formal school education shall be provided other forms of education suited to their requirements. Programme No.7 directs to ensure equality of opportunity; special assistance shall be provided to all children belonging to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections, both in urban and rural areas. Programme No.8 envisages that children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities for education, training and rehabilitation and will be helped to become useful citizens. Programme No.10 provides that no child under 14 years of age shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work. Programme No.11 postulates that facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed or mentally retarded. Programme No.13 provides that special programmes shall be formulated to spot out and encourage and assist gifted children, particularly those belonging to the weaker sections of society. Programme No.14 envisages that existing laws should be amended so that in all legal disputes, whether between parents or institutions, the interest of children are given paramount consideration. Programme No.15 provides that in organising services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment. Priority sectors have been provided in this behalf and paragraph 4(c) provides maintenance, education and training of orphan and destitute children. They require special care, education, training and rehabilitation of handicapped children; in clause (e) thereof, role of voluntary organisations is emphasised. Paragraph 6 thereof postulates that the Government shall endeavour that adequate resources are provided for child welfare programmes and appropriate schemes are undertaken.

34. India has a tradition of voluntary action which shall be the endeavour of the State to encourage and strengthen voluntary actions so that State and NGOs complement each other. Paragraph 7 postulates legislative and administrative action in that behalf and paragraph 8 emphasises people's participation in implementation of this Programme. It would, thus, be seen that the constitutional imperatives of the national policy of the children and the international principles for the development of children are of the paramount need and consideration is for the child development. The handicapped children and those from weaker sections are given special attention by the State and voluntary agencies.

35. The question, therefore, is: what action is to be taken to rescue, rehabilitate and bring the children of fallen women into the mainstream of the society? As stated earlier, three Cs (CCC) are necessary for successful implementation, to rescue and rehabilitate the children of the fallen women living in the red light area. Counselling, Cajoling by pursuation and Coercion, as the last resort, are the three Cs for successful implementation of them. 65.5% of the fallen women have children and usually they are in the age group of one to ten years. Generally, they prefer to keep their children away from them while they are in the act of intercourse except those children who are very young. Out of 71% children of illiterate fallen women 39% are literate while 58% of the total have had primary or secondary or higher education. They show keen interest to educate their children. The children tend to spend their time at study or leisure; though girl children tend to be engaged in house hold jobs as is usual among poorer classes. The children face the problems mainly due to (i) lack of father figure to provide security, care and guidance; (ii) increased responsibilities of mother; (iii) economic hardships (iv) lack of facilities to meet basic needs; (v) unhealthy social environment; (vi) malnutrition (vii) coercive attempts by managers of brothels; (viii) tauntings, due to dislike, by surrounders; and (ix) lack of proper counselling and guidance; motivation and opportunity gaps.

36. Many a prostitute themselves are child prostitutes (for short, the 'CP'); they and the children of the prostitutes (for short, the COP') need to be removed from the red light area. Generally, the police resort to IPC and ITP Act in this behalf but the forceful rescue of CP or COP in reality is not successful in their rehabilitation. In this behalf, it is necessary to take aid of the definition of "neglected child" defined in JJ Act. It is already seen and is reiterated for continuity that 'neglected juvenile' means one found in begging; or found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; or has a parent who is unfit or incapacitated to exercise control over the juvenile; or lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life; or who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. The JJ Act makes distinction between 'delinquent juvenile' and 'neglected juvenile' attributing to a delinquent juvenile an act or omission punishable by law to identify him as a delinquent juvenile. A neglected juvenile is one who is of the age of 16 years in the case of a boy and 18 years in the case of girl, or whose parents are unfit because of being living in prostitution, or the child born to a prostitute, or one who frequents or associates with prostitution becomes a neglected juvenile. A child brought to associate with a prostitute or is engaged in the prostitution or the profession of prostitution or another juvenile who leads an immoral or depraved life or one who is likely to be abused or exploited for immoral or illegal purposes for unconscionable gain is also a juvenile. The crime is not attached for identifying him/her as neglected juvenile; it is so in the case of a delinquent juvenile under the Act. They are to be kept in the juvenile home as a place of safety.

37. An institution established or certified by a State Government under Section 9 of the JJ Act is a juvenile home. The object of the Act is not to punish the juvenile but to rehabilitate him/her, be it a delinquent juvenile or neglected juvenile. In the latter case, it is one of obligations of the State to provide for care and concern of the State to establish a juvenile home under Section 9 of the JJ Act. Section 4 of the JJ Act enjoins the State to constitute, by a notification, for any area specified in the notification, one or more Juvenile Welfare Boards for exercise of the powers and discharging the duties conferred or imposed, under the JJ Act, on such Board in relation to neglected juveniles.

38. The Board shall consists of a Chairman and such other members as the State Government thinks fit to appoint, of whom not less than one shall be a women; and every such member shall be vested with the powers of a Magistrate under the Cr.P.C. The Board shall function as a Bench of Magistrates and shall have the powers conferred by the Cr.P.C., as the case may be, on a judicial Magistrate of the first class or Metropolitan Magistrate in Metropolitan cities. Even, in certain cases, a delinquent juvenile who commits an offence like begging, being the neglected juvenile, is covered as a neglected juvenile and should not be treated as delinquent juvenile since he began begging due to destitution or was forced to beg by organised gangsters. Therefore, all the types of juveniles defined within the ambit of neglected juvenile, though attached with certain acts or omission, are punishable under law, they still remain to be neglected juvenile and should be dealt with by the Welfare Board and be brought within the protective umbrella of the juvenile home established under Section 9. Establishment of juvenile home, thus, is a mandatory duty of the State to provide teeth to the provisions of the Constitution, the Directive Principles, the Convention on the Right of the Child read with principles of United Nations Declaration and National Policy of the Government of India referred to hereinbefore, and are protected by the JJ Act.

39. Every child who is found to be neglected juvenile should be dealt by the Board and should be brought within the protective umbrella of the juvenile home. The attribution as 'neglected children' is not social stigma; the purpose is to identify the children as juveniles to be dealt with under the JJ Act which is more a reformative and rehabilitated centre rather than for punishing the child as criminal; and mend their behaviour and conduct. In an appropriate case, where the treatment of bringing the neglected juvenile into the national mainstream takes long time, the definition coupled with age prescription, should not be strictly interpreted to deny the ameliorative care, consideration and rehabilitation of the neglected juveniles. The benefit of reformation, rehabilitation and bringing them into the mainstream after the passing of the age prescription under the Act, is the goal sought to be achieved, lest, it has the effect of throwing the neglected juvenile into the vile of prostitution or exploiting him for organised crimes by the organised gangsters taking advantage of his immaturity and despondence; that would be deleterious to the child's development and would widen the deep gap between hope and reality in the operation of the provisions hereinbefore referred to. The definition of 'neglected juvenile', therefore, should be interpreted broadly which is an important function for the purpose of identifying the groups of children who need care and attention and protection for rehabilitation. Their withdrawal from the protective umbrella of the JJ Act foils the goals set out; besides all measures to bring the neglected juvenile into the mainstream of the social status end up in failure and frustration.

40. Even if the economic capacity of the mother of neglected juvenile in the red light area to educate and to bring him up would not relieve the child from social trauma; it would always be adverse to keep the neglected juvenile in the custody of the mother or the manager of the brothel; thus, the child prostitute is unsafe and insecure. So, they should be rescued, cared for and rehabilitated. As stated earlier, the three C's, namely, counselling, cajoling and coercion of the fallen women to part with the child or child prostitute herself from the manager of the brothel is more effective, efficacious and meaningful method to rescue the child prostitute or the neglected juvenile. The income criteria, therefore, is not a factor not to rescue the child prostitute or the neglected juvenile for rehabilitation.

41. It is of necessity to remember that the arms of law are long enough to mould the law to operate on the even keel. The coersive power with the law enforcement agency to rescue the child prostitute or the neglected juvenile, may not necessarily end up as a successful means. It would be last resort when all avenues fail. On the other hand, invovlement of the non-governmental organisations in particular women organisations which are more resourceful for counselling and cautioning, would make deep dent into the thinking mould of the fallen victims and would be a source of success for their retrieval from the prostitution or sending the neglected juvenile to the juvenile homes for initial treatment, psychologically and mentally, and will yield place to voluntariness to surrender guardianship of the child prostitute or neglected juvenile to the Welfare Board or to the NGOs to take custody of a child prostitute or the neglected juvenile for, care, protection and rehabilitation.

42. The V.C. Mahajan Committee report states that the resort to Sections 14 and 17 of JJ Act has met with resistance by the mothers and in the case of child prostitute, by the managers of the brothels. The coercive method adopted on one occasion by the Delhi Police pursuant to a complaint under Section 13 of the JJ Act on March 7, 1990, led to frustration of the entire operation, when on an early morning, the prostitutes were taken by surprise by tap on the doors and children were taken into custody, on the pretext of being examined by the doctors. Total 450 juvenile were taken into custody but no prior arrangement was made with the doctors for their examination. The children were not given custody immediately. The children were taken into custody; 112 children below 16 years were kept in the custody of the police. Their examination went on upto March 23, 1990 by which time, the agitated mothers and the managers of the brothels resorted to pressure technics. Ultimately, it all ended in a fiasco. All were released by managers of juvenile home. This would indicate apathy on the part of police in proper implementation and lack of prior planning, understanding and concerted action between the law enforcement agency, the NGOs and public spirited persons and doctors. Instead of doing good. it does harm. It, therefore, gives a stark lesson that until proper arrangements are made and concerted action taken *ad hoc* attempt to enforce law results in defeat of the purpose of the JJ Act. On the other hand, if the NGOs in particular women members of the NGOs pursue and counsel the mothers of the children or managers of child prostitutes to have them into custody and if proper care and treatment is given, rehabilitation is the sure road to the successful results; it would be a success rather than frustration of the enforcement of the JJ Act. It is, therefore, clear imperative that proper planning, constant counselling and persuation are the appropriate means, rather than abrupt to ad hoc coercive steps, unless it becomes the last resort, for successful enforcement of the scheme.

43. The question then is: what is the proper method required to rehabilitate the neglected juvenile or child prostitute taken into custody under the JJ Act for enduring results? It is rather unfortunate that the juvenile homes established and being run by the Government are not effectively been managed and YIELDING expected results. They become ornament for the statistical purpose defeating the constitutional objectives and international Conventions which are part of the municipal law. This Court on May 2, 1990 had directed the enforcement agencies to bring the prostitute, neglected juveniles for the rehabilitation in the juvenile homes manned by well qualified and trained social workers. The child prostitutes rescued from the red light areas should be shifted into the juvenile homes. They should ensure their protection in the homes. The officers in charge of the juvenile homes, the welfare officers and the probation officers should coordinate the operation and enforce it successfully. They should be made responsible for the protection of the child prostitutes or the neglected juveniles kept in the juvenile homes for psychological treatment in the first instance relieving them from the trauma under which they were subjected to while in the brothels and red light areas. The special police authorities should be established to coordinate with the social welfare officers of the State Government and public spirited persons, NGOs locally available, and see that the juvenile homes are entrusted to efficient and effective management, the child prostitutes or neglected juveniles are properly protected and psychologically treated, education imparted and rehabilitation succeeded. They should also be provided with proper accommodation maintenance facilities for education and other rehabilitation facilities.

44. V.C. Mahajan Committee's report specifies at page 31 that since its inception till November 1989, 102 boys and 34 girls were admitted by a responsible institute, a non-statutory body in Pune run on voluntary basis to impart education to the destitute children in general and neglected juveniles and child prostitutes in particular, with all facilities; it is run by Bal Sangopan Centre run by Shreemant Dagausheth Halwai Ganpat Trust which gets funds from the Ministry of Welfare, Government of India under the scheme for children in need of care and protection. Similar homes are also being run for 75 children at Kolhapur and Bombay. As a policy, the Trust does not keep girls above 12 years in the institute. On the other hand, it has tied up with Hinge Street Sikshan Sansthan at Pune for placement of the girls above 12 years into their custody but the Trust continues to be the parent institution, paying their fees and holding the overall responsibility to bring up the girls above 12 years. The report also states that the mothers are allowed to visit the children once in a month and they are allowed to take them home for brief spells during festivals and other special occasion. There is another institution, viz., 3'Nihar' run by 'Vanchit Vikas' institute at Pune. It is founded on the basis of the felt needs of the neglected juvenile. Social workers of Pune Corporation cooperate with them. There are special health reforms available to prostitutes, the workers come into frequent contact with the prostitute mothers and their children. Gradually, they are getting acquainted with the situation and awareness is generated of the disadvantages to keep the children with them while remaining in red light area. The motivation yielded positive results in helping the children rescued from the mothers and their placement in the home. The institute is run through donations. It is being run for the past 15 years. Much progress has been made in the struggle to rehabilitate the neglected juveniles. Therein, they have established a school for 25 children being used in that 'Nihar. Most of the children are in the age group of 5 to 10 years. They take only female children with the female staff to attend to the needs of the children. Their basic requirements of food, clothing and shelter are taken care of by 'Nihar'. Health, education and overall development is also taken care of. The children are enrolled in Zila Parishad Schools. Residential staff help them to take them to the schools and bring them home. On Saturdays, teachers spend their time in 'Nihar' teaching music and playing games with the children. On Sundays, teachers come from Pune and spend time with the children and keep them in their studies. The mothers of the children visit once in a month. The management does not allow the mothers to take the children except for short duration. The prostitute mothers themselves have realised the advantage to keep their children away from vile environment and are happy with educational progress of their children. Similarly, "Devadasi Niradhar Mukti Kendra, Ganghiganj" is running a centre by name "Devadasi Chhatra Vasti Graha" at Pune from October 1986. It is a residential institution for the children of the Devadasis. 80% of them are the Devadasi children while 20% are children from socio-economic backward classes. Funds for this institution are granted by the Department of Social Welfare, Government of Maharashtra. It has on its roll, 75 boys and girls. As on the date of the visit by the Committee on July 7, 1990, 57 boys and 8 girls (total 65) were found in the institute. Similar institutions are being run elsewhere; the details of which are not material. They have been elaborated in the Report of V.C. Mahajan Committee.

45. The above facts do indicate that the NGOs are actively involved in the field of rehabilitating and educating the children of the fallen women as neglected juveniles not brought within the net of JJ Act. The mothers have their legitimate aspirations to bring their children into the mainstream of the nation. What needs to be done is proper, efficient and effective coordination and management in particular entrustment to the NGOs which would yield better results than the management solely by the Governmental agencies. The motivation by the NGOs makes a deeper dent into the mind of the prostitute mothers or child prostitutes to retrieve them from the flesh trade and rehabilitate the children as useful citizens in the main stream of the society. V.C. Mahajan Committee has given details of the Child Development and Care Centres (for short, the 'CDCC') in Annexure IV to the Report. It states how the management needs to be done, as under:

> *CHILD DEVELOPMENT AND CARE CENTRES for brevity CDCC)*
>
> (A Scheme for Children of Prostitutes & Children Associating with Prostitutes and Prostitution)
>
> Various factors have led to the perpetuation of prostitution which in turn has given rise to a large population of prostitutes' children. Their mothers' nature of work, status, income, etc. often leave the children wanting in attention and care for their overall development. However, it is not enough to perceive them as mere victims of neglect. Their cause has to be taken up to prevent them from taking to prostitution or its promotion and curbing their proneness to delinquency. It is believed that children's energies have to be tapped and channelised. The Child Development and

Care Centres are envisaged to provide Localised services through which the larger interests of these children can be attended to. Such Centres are to be situated in

i) the vicinity of red light areas
ii) the vicinity of other areas identified as having a concentration of prostitutes
iii) those areas where there is a concentration of communities among whom prostitution is the traditional occupation of the women and girls.

These Centres will be run by voluntary organisation with government fund and have Advisory and Monitering Committees at Central, State and Local levels.

(Emphasis supplied)

OBJECTIVES

The scheme would

i) provide welfare and developmental services for children of prostitutes and other children associating with prostitutes and prostitution by making them socially productive beings;
ii) try to wean them away from their surroundings by referring them to suitable residential institutions as and when necessary;
iii) try to reach out to the mothers (through their children) and counsel them on different issues related to their personal lives, their occupational lives and their children; and
iv) operate as an information dissemination and conscientious point, particularly for the higher age group (12-18 years).

Services/Facilities

Keeping in view the total care and development of the child, the following services/facilities would be provided.

i)	crech (day and night) ·	
ii)	pre-school education (Balwad)	The objective of pre-school education, besides the physical emotional and social development of the children, is to prepare them mentally to attend formal schools in future. This, it is hoped will increase the enrolment in schools.
iii)	non-formal education/ functional literacy	
iv)	counselling (personal and career)	
v)	nutrional inputs	
vi)	health care	
vii)	library	
viii)	toy-bank	
ix)	recreation	
x)	outings and educational trips	
xi)	skill development	
xii)	'save for the child' scheme	Mothers are anticipated to be spending Rs. 100/- (at least) per child per month when the child stays with her. When the child is placed in the custody of a residential institution, she no longer has to spend on the child. She should, therefore, start an account in the name of the child in any nationalised bank and deposit Rs. 100/- every month. If at the end of one year it is found that she has been regular in depositing the amount, the CDCC will start contributing an equal share. By the time the child is out of the institution he/ she will have some immediate financial support.

Note: Suggestion by the Court:	The Government of India should extend the Thrift Scheme of Women for these fallen women as well.
xiii) after school educational help	help the children complete their homework and prepare lessons for schools. Teachers would also help them with any difficulties faced in school. By this measure, the rate of school dropout can be checked.
Suggestion and Directions of the Court:	Special coaching should be arranged for these children.
xiv) de-institutionalised help	Some of the mothers may not be agreeable to part with their children or have different priorities for the children. Money may not be their problem. In such cases the CDCC may enlist their children as recipients of de-institutionalised care services. It would ensure that the minimum needs of the child are met by the mother and his/her development is in no way impeded. It would be binding on the mother to provide the child with the basic minimum facilities for the child's overall growth and development. This would be a means of getting the mother to provide for the child instead of institutionalising him/her. Here, in the process, the CDCC would operate as a catalytic and monitoring agency. The CDCC will also follow up the cases of those children whose mothers are placed in Protective Homes. In case they are endangered in any way by separation from mother, the CDCC will adopt necessary steps to help them. The CDCC would be paid a nominal sum for its services and also for spending onsome of the items required by the child for its growth, in case the mother is unable to meet such expenditure. The mother will be liable to make regular reports to the CDCC to facilitate its monitoring function.
Suggestion and Directions of the Court:	All necessary funds should be provided by the appropriate Government, i.e., either the Central Government or the State Government, as the case may be.

(*Note:* This arrangement will work for the traditional communities, with either a CDCC or any other voluntary organisation functioning as a catalytic and monitoring agent.

The CDCC would function as a nodal agency in the field and would co-ordinate with government departments to bring as many programmes to its group of beneficiaries as possible. Further, they would arrange referral services in the following areas as and when the need is felt for the benefit of a child;

i) Institutionalised care - arrange
    sponsorship
    foster care
ii) skill development
iii) health
iv) on the job training

v) training for enterpreneurship

Eligibility of Beneficiaries

Children of any age between 0-18 years who are either -

i) children of prostitutes, or

ii) children associated with prostitution or prostitute, may be benefited from this scheme.

In all deserving cases the scheme should extend services to those children above 18 years, only if it is clearly seen that they are not yet able to feed for themselves and would be benefited by further support. Those older than 18 years would be assisted as special cases.

Coverage

There would be no limit to the number of children being covered by the Centre. Being a service oriented centre it is likely that only groups of children will come to the Centre during the day asking for any of the services. Only in the case of creches and balwadis there would be regular attendance where not more than 25-30 children should be enrolled at any given time and when the member increases separate groups be formed and benefit of service extended.

Organisation

The following are some of the general conditions for eligibility for applying for the scheme:

(i) The applicant should be a voluntary, non-governmental organisation, registered under an appropriate Act or a regularly constituted branch of a registered welfare organisation.

(ii) The organisation seeking assistance should be a non-profit and secular organisation in a way that its services would be open to all without any discrimination of religion, caste, creed, language or sex.

(iii) The organisation should have a regularly constituted managing committee with its functions and their responsibilities clearly laid down in its Bye-laws.

(iv) the organisation should preferably have had some experience in managing child development programmes or experience of working on the issues related to prostitution.

Programme

Though it is viewed as a localised service centre, its community outreach aspect must be active. By reaching the prospective target group and acquainting them with the services available, the utilisation of the CDCC can be availed.

The staff at the Centre would organise health camps and awareness generation camps from time to time.

While providing the services of the children, efforts of the staff at the Centre would be to counsel the mothers and children and encourage the latter to join educational institutions. it should assist them in getting admitted into the educational institutions. Teachers attached to the CECC would help the school going children in completing their homework and coping with other difficulties. During school hours the teacher would hold functional literacy classes for the elder children who are uneducated.

By way of extending further support to this group of uneducated and unskilled children, the Centre's staff will have to counsel them regularly.

As it is advisable to remove the children from the vicinity of the red light area by about 6 years of age, the staff will have to convince the mothers and arrange for their placement in residential institutions. Regular meetings are to be held with the mothers to discuss about the health and nutritional needs of their children and to make them conscious about the environment. Efforts should be directed towards making them interested in the activities of the CDCC. They must be kept informed about the progress of their children and of their current activities, problem and future plans. They must be allowed to participate in planning and execution of programmes.

The Centre must follow up cases of women who are placed in Protective Homes. Their children must be immediately enlisted in the list of beneficiaries at the Centre. Depending upon their situation care and protection must be extended to them such that the separation from mother does not

(i) hamper their education

(ii) make them emotionally and physically inscure

(iii) render them neglected and uncared for

(iv) expose them to greater risks of delinquency.

In case a child is affected in any of these ways, the Centre must step in and to give him/her emotional support and to place him/her in a residential institution. The mother must be involved in the process and the Centre must be in touch with her at the Protective Home.

The CDCC will involve the local level youth club or any other organisations and with support from the

(i) mobilise the local community,

(ii) organise activities for the beneficiary group.

Working Hours of the CDCC

1.	Creche .... (day and night)	as per decision of the Local committee
2.	Balwadi	9.00 a.m. to 1.00 p.m.
3.	Non-formal .... Education	1.00 p.m. to 4.00 p.m.
4.	After School Education	4.00 p.m. to 6.00 p.m.

Timings of the other facilities to be fixed according to local situation.

Staff

1.	Programme Co-ordinator	1
2.	Special Worker-cum-Counseller	2
3.	Teacher	1
4.	Balwadi Teacher	1
5.	Helper-cum-Office Assistant	1
6.	Ayah-cum-Cook	2
7.	Chowkidar	1

Advisory and Monitoring Committees

To ensure effective implementation of the scheme Advisory and Monitoring Committee s will be set up at various levels. There would be a Central Committee with State and Local Committees under it. While there will be a State Committee in every state, there may be as many Local Committees as the number of CDCCs operative in the respective state. A single Committee may be adequate in case there are more than one CDCC in the same city/town.

Members of the Committees

Central Committee (Seven Members)

i) Chairperson, Central Social Welfare Board

ii) Representative of the Department of Women and Child Development

iii) Representative of the Ministry of Welfare

iv) Retired police officer.

v) Three social worker.

State Committee (Seven members)

i) Chairperson, State Social Welfare Advisory Board.

ii) Representative of the Department of Women and Child Development

iii) Representative of the Department of Social Welfare

iv) Retired Police Officer.

v) Three Social Workers.

Local Committee (Seven Members)

i) Programme Co-ordinator CDCC.

ii) Representative of mothers

iii) Representative of community

iv) Representative of local club, if any

v) Secretary or representative of the voluntary organisation implementing the scheme

vi) Two Social Worker.

These Committees will run the scheme with the assistance from the government. No separate office need to be maintained. The necessary office work can be done at the offices of the Chairperson, CSWB (in the case of the Central Committee). The CDCC would help in the office work of the Local Committee. For this, the respective organisations will receive a token Administrative Assistance grant.

Meeting of the Committee can be organised by the respective organisations. There must be quarterly meetings of the Central and State Committees. The Local Committees must, however, meet once in every month. The Local committee is to send its minutes of meeting held and reports of activities to the State and Central Committees.

The Central Committee will function as the central Co-ordinating body, with regular feedback from the State and Local Committees. Besides regular meetings, the Committee may call emergent meetings to discuss any urgent matter.

These Committees will co-ordinate the functioning of any ICDS Centres being run in lieu of the CDCC (in case a voluntary organisation is not available to run and manage a CDCC) and execute the same functions as it does in the case of CDCC."

46. We are of the view that the suggestions require earnest examination to give force and content to them. The rescue and rehabilitation of the child prostitutes and children should be kept under the nodal Department, namely, Department of Women and Child Development under the Ministry of Welfare and Human Resource, Government of India. It would devise suitable schemes for proper and effective implementation. The institutional care, thus, would function as an effective rehabilitation scheme in respect of the fallen women or the children of fallen women even if they have crossed the age prescribed under the JJ Act. They should not be left to themselves, but should be rehabilitated through self-employment schemes or such measures as are indicated hereinbefore. The juvenile homes should be used only for a short stay to relieve the child prostitutes and neglected juveniles from the trauma they would have suffered; they need to be rehabilated in the appropriate manner. The details are required to be worked out by meaningful procedure and programmes. In the light of the directions already given by this Court from time to time to the Central Government, State Government and Union Territory administrators, adequate steps should be taken to rescue the prostitutes, child prostitutes and the neglected juveniles as indicated hereinabove; they should take measures to provide them adequate safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by Government of India or State Government concerned. A nodal Committee with the public spirited NGOs, in particular women organisations/ woman members should be involved in the management. Adequate encouragement may be given to them; the needed funds should be provided and timely payments disbursed so that the scheme would be implemented effectively and fruitfully.

47. The Minister of Welfare, Government of India will constitute a Committee consisting of the Secretary in charge of Department of Women and Child Development as the chairperson and three or four Secretaries from the concerned State Governments, to be nominated by the Minister of Welfare. They would make an in-depth study into these problems and evolve such suitable schemes as are appropriate and consistent with the directions given above. The Committee should be constituted within one month from the date of the receipt of this judgment. The Committee should finalise the report within three months thereafter. As soon as the report is submitted, the same may be communicated to all the State Governments and the concerned Ministries for their examination. Within two month from date of the communication, the Minister of Welfare, Government of India, in coordination with the Prime Minister Office should convene a meeting presided over by the Prime Minister, with Minister of Welfare, Home Minister, Human Resource Minister, the concerned Ministers of the State Governments and their Secretaries as well to discuss the problem and take decisions. The Committee should finalise the report with further suggestions or amendments, if suggested in the conference. Thereafter, the report should be finalised and then direction would be given to the State Governments for effective implementation of the schemes. The nodal Department would enforce and regularly be supervised by the Ministry of Welfare, Government of India. A permanent Committee of Secretaries should be constituted to review the progress of the implementation on annual basis, and to take such other steps as may be expedient in the effective implementation of the schemes. Periodical progress as to funding and enforcement of the scheme should be submitted to the Registry of this Court. If further directions would be needed, liberty is given to the parties to approach this Court. In that view of the matter, it is believed and hoped that the above law and directions would relieve the human problem by rehabilitation of the unfortunate fallen women caught in the trap of prostitution; their children would be brought into the mainstream of the social order; these directions would enable them to avail the equality of opportunity and of status, with dignity of person which are the arch of the Constitution.

48. My learned brother D.P. Wadhwa, J. has disagreed to the directions given to the Union of India etc. in the first part of the Order on the ground, as seems to me, that in view of the relief sought for in the writ petitions and the directions given by this Court on the earlier occasions there is no scope for the relief being granted now and directions given in the concluding part of the Order. Brother Wadhwa, J. thus agrees with the directions given at pages 78 to 81 relating to the prostitute children and the children of the fallen women. Directions at pages 38-39 and 43 to 45 of this Order pertain to the prevention of induction of women, in various forms, into prostitution; their rescue from the vile flesh trade; and rehabilitation through various welfare measures so as to provide them with dignity of person, means of livelihood and socio-economic empowerment. In that behalf, my learned brother has not concurred for the reasons given in the separate Order proposed to be delivered by him. That has necessitated me to have a re-look into the precedents on Public Interest LItigation vis-a-vis the scope, ambit and power of the Court to grant reliefs in matters arising from real and true public interest litigation in which the condition of *locus standi* has been relaxed and public-spirited persons, not motivated by pressure tactics for ultimate ends, are encouraged to work for the poor, under-privileged or weaker segments of the society who are otherwise unable to avail of judicial process for grant of general reliefs to such a group of persons.

49. In *Labourers working on Salal Hydro Project vs. State of Jammu & kashmir & Ors.* [(1983) 2 SCC 181] - offspring of a letter addressed to this Court enclosing a clipping of the newspaper "Indian Express" dated August 26, 1982 - it was brought to the notice of this Court that a large number of migrant workmen were subjected to exploitation and violation of various welfare laws made for them. Intervention was sought to prohibit exploitation and to grant different reliefs to them. The letter was treated by this Court as a writ petition under Article 32. Directions were issued to the Labour Commissioner (Centre) to enquire into and submit a report;

the Central Government was also directed to file their affidavit. After receipt of the report and filing of the counter-affidavits, this Court found, as a fact, from the evidence that the workmen were denied of the minimum wages and other welfare benefits. Accordingly, directions were given. This decision, therefore, is an authority for the proposition that a Public Interest Litigation is not of adversory character but one of performance of the constitutional duty; therein new procedure was adopted for collecting evidence from acceptable source. In *Dr. Upendra Baxi & Ors. (II) vs. State of U.P. & Ors.* [(1986) 4 SCC 106], Dr. Upendra Baxi, a noted humanist and champion of Human Rights, had addressed a letter to this Court that a writ petition may be entertained in public interest to protect the girls living in the Government Protective Homes at Agra who were being denied right to live with basic human dignity by the State of Uttar Pradesh which was running the Home. In that case, it was held that the public interest litigation is not a litigation of an adversory undertaken for the purpose of holding the State Government or its officers responsible for making reparation. Public interest litigation involves a collaborative and cooperative efforts by the State Government and its officers, the lawyers appearing in the case and the Bench for the purpose of making Human Rights meaningful for the weaker sections of the community in ensuring the socio-economic justice to the deprived and vulnerable sections of the humanity in the country. Directions, therefore, were accordingly issued; details thereof are, however, not material for the purpose of this case. What is material is that the power of this Court is wide to grapple with new situations; it can get the evidence collected with cooperation of the counsel for the parties and the State and mete out justice to protect the constitutional rights guaranteed to all the citizens in particular, the vulnerable weaker segments of the society. *Vincent Panikurlangara vs. Union of India & Ors.* [(1987) 2 SCC 165], related to manufacture of drugs and involved examination of evidence to determine the character of the action taken by the Government on the basis of advice tendered to it to prohibit the manufacture and trade of drugs in the interest of patients who required the drugs for that treatment. This Court pointed out that the statutory bodies and the Government are bound to respond and join the proceedings pending before the Court. They are not litigants; yet they do not have the choice of keeping away from the Court like private parties in ordinary litigations opting to go *ex parte*. Since the matter involves technical aspects vis-a-vis health of the public and is of national importance, this Court ensured cooperation of all the parties and *suo motu* extended the opportunity of hearing and inviting the named statutory authorities to assist the Court. In that behalf, it was held that the public interest litigation is not a normal litigation with adversaries fitted against one another.

50. As already seen, in *Bandhua Mukti Morcha case,* this Court had evolved a new procedure supplementing the existing procedure to meet the new situation and to render justice in public interest litigations. It directed the Commissioner Labour (Central) to investigate into and collect the evidence and submit the report to the Court, as dealt with at pages 189-90. In *Rural Litigation and Entitlement Kendra vs. State of U.P.* [(1989) Supp. 1 SCC 504] this Court dealt with a public interest litigation relating to ecological imbalances created due to mining operations and denudation of forest. In paragraphs 16 & 17, this Court at pages 515-16 had pointed out that the writ petitions before the Court were not interparties disputes and had been raised by way of public interest litigation and the controversy before the Court was as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. This Court had directed stoppage of mining activity since it created ecological imbalance and denudation of the forest. In *M.C. Mehta & Anr. vs. Union of India & Ors.* [(1987) 1 SCC 395], a Constitution Bench of this Court was to consider the scope of the public interest litigation to grant compensation to the victims of hazardous or dangerous activities when deaths or injuries were caused to them on account of the accident during the operation of such activities. This Court had held that the law should keep pace with changing socio-economic norms; where a law of the past does not fit in the present context, the Court should evolve new law in a public interest litigation. The power of this Court is very wide to devise appropriate procedure and to issue directions, orders or rules. This Court is competent to grant a remedial assistance by way of compensation in exceptional cases. The Court has incidental and ancillary power in exercise of which it can devise new methods and strategy in securing enforcement of fundamental rights particularly in public interest litigation or social action cases. Directions were accordingly granted in that case. In *Bandhua Mukti Morcha vs. Union of India & Ors.* [(1984) 3 SCC 161] the writ petition under Article 32 was filed to release bonded labourers in the country by way of letter addressed to this Court. In that behalf, this Court had taken assistance of the parties, got the evidence collected and then issued appropriate directions for release of the bonded labour. In this behalf, it was held at page 189 that when the poor come before the Court, particularly for enforcement of their fundamental rights, it is necessary to depart from the adversorel procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the Court for the purpose of securing enforcement of their fundamental rights. It must be remembered that the problems of the poor which are now coming before the Court are qualitatively different from those which have hitherto occupied the attention of the Court and they need a different kind of lawyering skill and a different kind of judicial approach. If we blindly follow the adversorial procedure in their case, they would never be able to enforce their fundamental rights and the result would be nothing but a mockery of the Constitution. We have, therefore, to abandon the *laissez faire* approach in the judicial process particularly where it involves a question of enforcement of fundamental rights; we should forge new tools, devise new methods and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of the people. And this is clearly permissible by the language of clause (2) of Article 32 because the Constitution-makers while enacting that clause, have deliberately and advisedly not used any words restricting the power of the Court to adopt any procedure which it considers appropriate in the circumstances of a given case for enforcing the fundamental right. In *Santhal Pargana Antyodaya Ashram vs. State of Bihar & Ors.* [(1987) Supp. SCC 141] in a public interest litigation, this Court obtained a report of the Committee appointed by the Court, accepted the report and gave directions to release and rehabilitate the bonded labours identified by the Committee and to implement the Committee's recommendations, as far as possible, were issued to the State Government. The State Government were directed to carry out the statutory obligations under the Bonded Labour System Act, 1976.

51. It would, thus, be the established procedure of this Court under Article 32 that the public interest litigation is not adversorial.

It is one of collaboration and cooperation between the State and the Court. This Court as the sentinel on the *qui vive,* is constitutionally obligated to enforce the fundamental rights of all the citizens of the country and to protect them from exploitation and to provide guidance and direction for facilities and opportunities to them for securing socio-economic justice, empowerment and to free the handicapped persons from the disabilities with which they suffer from and to make them realise and enjoy the fundamental rights ensured to them under the Constitution. In that behalf, this Court is entitled and empowered under Article 32 to adopt such procedure as is expedient in a given fact situation and deal with the matter appropriately. Therefore, the rigour of the pleadings or the reliefs sought for in adversorial litigation, has been softened; new methods, tools and procedures were evolved to mete out justice and to enforce the fundamental rights. Obviously, therefore, when a limited relief to establish separate schools for the children of the fallen women was sought for by the petitioner-Gaurav Jain, this Court did not confine to the same. It, instead, enlarged the scope and directed the authorities as an interim measure to have those children admitted in the general schools to make the children overcome the disabilities had from foul atmosphere and to generate the feeling of oneness and desegregation. In addition, this Court appointed V.C. Mahajan Committee to enquire into and submit a report. The report was accordingly submitted after extensive travelling to far and wide parts of the country; it studied not only the problem of the children of the fallen women but also the root cause of the menance*(sic)* of child prostitution and the prostitution as such and the need for its eradication. The prevailing conditions have been pointed out in the Report and beneficial actions already taken by some of the Social Action Groups have been pointed and also noted as illustrated hereinabove. They have also dealt with the problems of the children. The State Governments and the Central Government were supplied with the copies of the Report and they have not even objected to the recommendations; in fact, they cannot be objected to since it is a fact prevailing, unfortunately, in the country. Therefore, the relief cannot be restricted to the pleadings or to the scope of the directions earlier issued; the Court can take cognisance from indisputable or the undisputed facts from the Report of V.C. Mahajan Committee and other reports and articles published in recognised Journals and act upon it. Placing reliance thereon, the directions given in the Order, aim not only at giving benefits to the children but also to root out the very source of the problem as has been pointed out in the first part of the Order, it is for the Government to evolve suitable programme of action. My learned brother has very graciously agreed to the second part of the order relating to the setting up of juvenile homes for the prostitute children and children of fallen women.

52. By operation of Article 145(6), to the extent both of us have agreed, the Order constitutes as binding precedent. It is to remember that this Court being composed of large number of Judges has evolved its own procedure to transact court management of its judicial work and to decide cases/causes sitting in appropriate Division Benches constituted by the Chief Justice of India as per the Supreme Court Rules. Any observation made by one of the Judges has pursuasive obiter. When there is a dissent, the majority of opinion forms a binding precedent. Any difference of opinion between a Bench composed of two Judges, in an adversorial litigation requires resolution by a larger Bench of three Judges and/or if further reference is made to a Constitution Bench, it is to deal with the controversy and majority opinion forms precedent. As stated earlier, public interest litigation is not adversorial in nature but is one of cooperation and coordination between the three wings of the State and the coordination and it is the constitutional duty of this Court to ensure enjoyment of the fundamental rights by all citizens and in particular the poor and deprived social segments and in case of violation thereof, to prevent the same by giving appropriate directions in that behalf. In aid thereof, this Court has been armed by Article 142 to pass such orders as may be necessary for doing complete justice in a cause or pending matter before it. An order so made shall be enforceable throughout the Territory of India. Normally, if it were an adversorial dispute, we would have referred the matter to three Judge Bench in respect of the first part of the directions, namely, to prevent prostitution; to rehabilitate fallen women and to provide them facilities and opportunities by evolving suitable measures by all the Governments for enforcement of their economic empowerment and social integration with dignity of person which are fundamental rights to the unfortunate fallen women, i.e., the victims of circumstances. It is seen that this matter is pending for nearly a decade. If a reference is made to a three judge Bench, it may further be delayed. Since "delay defeats justice" it may amount to everyday denial of the fundamental rights to large number of fallen women.

53. I put a caveat upon myself and I am aware that Article 142 would be used to enforce final judgment or order which, in given special or exceptional circumstances, would include directions of this type to mitigate injustice and to elongate enforcement of fundamental and human rights. Article 142 speaks of doing complete justice in a cause. The arm of the Court is long enough to reach injustice wherever it is found and to mete out justice. Denial of the constitutional rights to the unfortunate fallen women outrages the quest for justice and pragmatism of constitutional ethos which constrain me to avail Article 142 of the Constitution of India to direct the Union of India as well as all State Governments to evolve, after indepth discussion at Ministerial level conference, such procedures and principles or programmes, as indicated in this Order, as guidance would help rescue and rehabilitate the fallen women. Otherwise, the fundamental and human rights remain pious platitudes to these miserable souls crushed in the cruel flesh trade with grinding poverty in the evening of their lives. Generally, Article 142 may not be invoked before the difference of opinion is resolved in an adversorial litigation and in keenly contested matters of even public interest litigation, in particular, of recent type cases. However, in the cases of the type in hand, where there would be no controversy on human problems of most unfortunate women which require their careful planning, rescue and rehabilitation, the exercise of the power under Article 142, even by a single member of the Bench, may be appropriate and efficacious to enforce fundamental and human rights of large number of neglected and exploited segments of the society. Society is responsible for a woman's becoming victim of circumstances. The society should make reparation to prevent trafficking in women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice, is the constitutional duty of the State. Their economic empowerment and social justice with dignity of person, are the fundamental rights and the Court and the Government should positively endeavour to ensure them. The State in a democratic polity includes its three constitutional organs - the Legislature, the Executive and the Judiciary. Legislature has already done its duty. The Executive and the Judiciary are required to act in union to ensure enforcement of fundamental and human rights of the fallen women. I am also conscience*(sic)* that the Union of India as well as the State Governments are sensitive to the conscience of their constitutional duty under Article 23 and are desirous to have the prostitution eradicated from the root with the aid of ITP Act, IPC and other appropriate legislative or executive actions. Sequential rehabilitation of the fallen women rescued from the red light areas and other areas required enforcement. The observations made in this Order, the constitutional provisions, the human rights and other International Conventions referred to in the Order and the national Policy would aid the Union of India and the State Governments as foundation and guide them to discuss the problems in Ministerial and Secretarial level Conferences and as suggested in this Order to evolve procedures and principles to ensure that the fallen women also enjoy their fundamental and human rights mentioned in the Order.

54. Before parting with the case, we place on record the valuable assistance and yeoman's service rendered by V.C. Mahajan Committee.

55. The directions are accordingly given. The writ petitions are directed to be posted after the compliance report as regards the actions taken in that behalf, is furnished by the Union of India for appropriate orders.

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(K. Ramaswamy, J.)

56. This writ petition under Article 32 of the Constitution was filed by Mr. Gaurav Jain, advocate of this Court as public interest litigation after he had read a report appearing in the 'India Today', a national magazine, of July 11, 1988. The petitioner had prayed as under:

> "In the circumstances, it is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:-
>
> a) issue an appropriate writ, in the nature of mandamus, order or direction, directing the respondents to provide separate schools with vocational training, hostels with the medical check-up facilities in each respondent state and union territory and such other places where this Hon'ble Court may direct, for the children of prostitutes, upto the age of sixteen years to rescue them, from falling into the infernal existence and the same immoral and deprived way of life by indulging in the vice profession of prostitution, pimps, drug-pushers and bootleggers and other hazardous employments:
>
> b) pass any other order/orders which this Hon'ble Court may deem fit and proper in the circumstances of the case."

57. By order dated February 20, 1989 the petitioner was directed "to suitably amend the writ petition and confine claim in the petition to the relief of setting up of juvenile homes as provided under Section 9 of the Juvenile Justice Act, 1986." Then on the next date, that is, March 13, 1989 the prayer for amendment was allowed and it was directed that prayer in the writ petition shall stand substituted "by what has now been indicated in the application for amendment".

58. By order dated November 15, 1989 while the court noted submission of Mr. V.C. Mahajan, advocate of the petitioner that separate schools and hostels be provided for the children of the prostitutes, the court did not find itself inclined to accept such a submission. The Court was of the view that segregating prostitutes children by locating separate schools and providing separate hostels would not be in the interest of such children. The Court by this very order constituted a Committee headed by Mr. V.C. Mahajan, Senior Advocate to consider the problems faced by the children of the prostitutes. This order of the Court is reported in 1990 Supp. SCC 709. This Committee examined the matter keeping the following objects in view:

> "i) Viability of having separate schools and hostels.
> ii) existing laws relating to the target group, and
> iii) possibility of evolving a scheme for these children, workable at the national level."

59. The Committee has since submitted its report. In its report the Committee has made various recommendations for the rehabilitation of the Children of prostitutes. I do not find that the question of eradication of prostitution was an issue involved in these proceedings or subject matter of Committee's deliberations. The Committee in its report which runs into over 100 pages has only referred in two paragraphs, while examining target group, as to who are the prostitutes. Apart from this I do not find there is any discussion in the report of the Committee towards eradication of prostitution. As to what should be the scheme to be evolved to eradicate prostitution, i.e. the source itself; the basics; and what succour and sustenance can be provided to the fallen victims of flesh trade was not a question agitated in the proceedings. Certainly no one can dispute that evil of prostitution must be curbed. It is the mandate of the Constitution which prohibit traffic in human beings. Keeping that object in view and in pursuance to International Conventions for the Suppression of Traffic in persons and of the Exploitation of the Prostitution of others signed at New York on May 9, 1950, the Parliament enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956. The Act was amended in 1978 to make good some inadequacies in the implementation of the Act and in the light of the experience gained during the period the Act was being implemented. Despite the amendments of the Act it was felt that enforcement of the Act had not been effective enough to deal with the problems of immoral traffic in all its dimensions. Suggestions had been made to Government by voluntary organisations working for women, advocacy groups and various individuals urging the enlargement of the scope of the Act, to make penal provisions more stringent and to provide for certain minimum standards for correctional treatment and rehabilitation of the victims. The Act was, therefore further amended in 1986 making it more wide based. The Act is now called as Immoral Traffic (Prevention) Act, 1956. I need not detail other objects of the Act as all the discussions would not be relevant in these proceedings.

60. I am not entering into the scope and width of public interest litigation but when the issue has not been squarely raised, concerned parties not informed, pleadings being not there, it may not be correct to embark upon that task and to give interpretation of the law applicable thereto and that too without hearing the parties when the issue is so profound certainly involving hearing of the Union of India and State Governments with respect to their problems.

61. Thus considering the substratum of the judgment prepared by my learned brother relating to children of the prostitutes and establishment of the juvenile homes I would concur with the directions being issued by him in his order. I would, however, record my respectful dissent on the question of prostitution and the directions proposed to be issued on that account and also, in the circumstances of the case, what my learned brother has to say on the directions proposed to be issued referring to the provisions of Article 142 and 145(5) of the Constitution.

....

(D.P. Wadhwa, J.)

SCALE (PIL) 1981-97 1104

SAMATHA *Appellant*

VS

STATE OF ANDHRA PRADESH & ORS. *Respondents*

CORAM: K. RAMASWAMY, S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.

PUBLIC INTEREST LITIGATION — ANDHRA PRADESH SCHEDULED AREA LAND TRANSFER REGULATION (1 OF 1959) AS AMENDED BY REGULATION 11 OF 1970 — SECTION 3(1) — MINING ACT (67 OF 1957) — THE FOREST CONSERVATION ACT, 1980 — SECTION 2 — THE ANDHRA PRADESH FOREST ACT, 1967 — MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957 AS AMENDED BY ACT OF 1991 — SECTION 11(5) — SCHEDULED AREA rw CONSTITUTION — ARTICLE 244 AND PARA 5(2) OF THE FIFTH SCHEDULE — Whether under the Regulation transfer of all lands in the scheduled area to a non-tribal is prohibited and the said prohibition equally applied to the government land and as such the mining leases in favour of the private respondents who are non-tribals are void — And whether the word 'person' in Section 3(1) of the Regulation as amended in 1970 would include the Government — Whether no forest land could be utilised for non forest purpose without the consent of the Central Government and the lease holds favour of the private respondents being the forest lands and there being no consent of the Central Government the leases are invalid — And whether in view of Section 11(5) of the MMRD Act the leases in favour of the private respondent who are non tribals must be declared to be void — Disposing the appeals, Held, Per Majority

(K. Ramaswamy, J)

A. It would, therefore, be settled law that the question whether or not the word 'person' used in a statute would include the State has to be determined with reference to the provisions of the Act, the aim and its object and the purpose the Act seeks to subserve. There is no reason to consider the word 'person' in a narrow sense. It must be construed in a broader perspectivity, unless these statute, either expressly or by necessary implication, exempts the State from the operation of the Act as against the State and would include "State Government". (Para 61).

B. The word "person" in Section 3(1)(a) would, therefore, be construed to include not merely the natural persons, in the context of tribal and non tribal who deal with the land in Scheduled Areas by transfer inter vivos but all juristic person in the generic sense, including the Corporation aggregate or Corporation sole, State, Corporation, partnership firm, a company, any person with corporate veil or persons of all hues, either as transferor or transferee so that the word `regulate in para 5(2)(b) of the Fifth Schedule in relation to the land in Scheduled Areas would be applicable to them either as transferor or transferee of land in a Scheduled Area. It, thus, manifests the constitutional and legislative intention that tribals and a Cooperative Society consisting solely of tribal members alone should be in possession and enjoyment of the land in the scheduled area as dealt with in various enactments starting from Gunjam and Vizianagaram Act, 1839 to the present regulation.

Judgment dated July 11, 1997 in C.A. Nos. 4601-02 of 1997 (Arising out of SLP (C) Nos. 17080-81 of 1995) With C.A. No. 4603 of 1997 (Arising out of SLP (C) No. 21457 of 1993) (M/s. Hyderabad Abrasives & Minerals (P) Ltd. represented by Shri M.V.S. Subramanium, Managing Director. vs State of Andhra Pradesh & Ors.) [1997(4) SCALE 746]

(Para 96).

C. The object of Fifth and Sixth Schedules to the Constitution is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals inter se but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled areas for their economic empowerment, social status and dignity of their person. Equally exploitation of mineral resources national wealth undoubtedly, is for the development of the nation. The competing rights of tribals and the State are required to be adjusted without defeating rights of either. The Governor is empowered, as a constitutional duty, by legislative and executive action, to prohibit acquiring, holding and disposing of the land by non- tribals in the Scheduled Areas. The Cabinet, while exercising its power under Article 298, should equally be cognizant to the constitutional duty to protect and empower the tribals. Therefore, the Court is required to give effect to the constitutional mandate and legislative policy of total prohibition on the transfer of the land in Scheduled area to non- tribals. (Para 111).

D. The transfer of the land in Scheduled Area by way of lease, for mining purpose in favour of non-tribals stands prohibited by para 5(2)(b) of the Fifth Schedule read with Section 3 of the Regulation. It is on record that the non-tribal individuals have transferred their lease hold interest in the mining leases in favour of some of the respondent-companies. The Government stands prohibited to transfer the mining leases to Corporation aggregate etc. except to its instrumentality. (Para 115).

E. The lease being a transfer of an interest in the land or a right to enjoy such property during subsistence of lease, its transfer stands prohibited. (Para 116).

F. The mining leases were granted by the State Government or were transferred and retransferred with the sanction of the State Government from private individuals to juristic persons, the partnership firms or companies. The lands with mining area are situated either in the reserved forest or forest land or within the Scheduled Area. Therefore, all the mining leases or renewals thereof are in violation of the Fifth Schedule. Equally, mining leases/ renewals of mining leases by the State Government are in violation of Regulation 3(1)9a) read with Section 3(2) of the Regulation and F.C. Act. Therefore, they are all void. (Para 127).

G. It is necessary that the Chief Secretary of the Andhra Pradesh State should constitute a committee consisting of himself, Secretary (Industry), Secretary (Forest), Secretary (Tribal Welfare/Social Welfare) to have the factual information collected and consider whether it is feasible to permit the industry to carry on mining operations. If the Committee so opines, the matter may be placed before a Cabinet sub-Committee consisting of Minister, Minister for Industries, Minister for Forests and Minister of Tribal Welfare to examine the issue whether licences could be allowed to continue until they expire by efflux of time or whether it is expedient to prohibit further mining operations in the light of Section 11(5) of the Mining Act, to take appropriate action in that behalf and submit report to this Court on the actions so taken. (Para 128).

H. In cases where the similar Acts in other States do not totally prohibit grant of mining leases of the lands in the Scheduled Area, similar Committee of Secretaries and State Cabinet sub-Committees should be constituted and decision taken thereafter. (Para 129).

I. Before granting leases, it would be obligatory for the State Government to obtain concurrence of the Central Government which would, for this purpose, constitute a sub-

Committee consisting of the Prime Minister of India, Union Minister for Welfare, Union Minister for Environment so that the State's policy would be consistent with the policy of the nation as a whole. (Para 130).

J. It would also be open to the appropriate legislature, preferably after a thorough debate/conference of all the Chief Ministers, Ministers holding the concerned Ministry and the Prime Minister and the Central Ministers concerned, to take a policy decision so as to bring about a suitable enactment in the light of the guidelines laid down above so that there would emerge a consistent scheme throughout the country, in respect of the tribal lands under which national wealth in the form of minerals, is located. (Para 131).

K. The State Government, therefore, is directed to ensure that all concerned industrialists, be they natural or juristic person stop forthwith mining operations within the scheduled area, except where the lease has been granted to the State Undertaking, i.e., A.P.S.M.D. Corporation; they should report compliance of this order to the Registry of this Court within six months of the receipt of this judgment. (Para 132).

L. The lessees of mining leases are directed not to break fresh mines; however, in the meanwhile, they are entitled to remove the minerals already extracted and stocked in the reserved forest area within four months time from today. All concerned authorities are directed to ensure compliance thereof. Even the State Undertaking carrying the mining operations, would be subject to the regulations under the FC Act and EP Act. It would be open to the State Government to organise Co-operative Societies composed solely of the Scheduled Tribes to exploit mining operations within the Scheduled Area subject to the compliance of the FC Act and EP Act. (Para 132).

(Per S.Saghir Ahmad, J)

M. The present scheme, set out in the Fifth Schedule and Regulations made by the Governor in exercise of the power under Para 5(2) of the Schedule, is to sell, distribute, assign or let out the Government land only to members of Scheduled Tribes. Section 11(5) introduced in the Act only seeks to give effect to what was already contained in the Fifth Schedule and the Regulations made thereunder. (Para 196)

N. In order to set at rest the above controversy raised at various levels that the Government land could also be allotted to non-tribals, the Amendment was brought about in the Mines and Minerals (Regulation and Development) Act, 1957 so as to make it sure that it was never the intention that the Government land could be allotted to non-tribals. The Amendment only retrates the existing position. (Para 196).

(Per G.B.Pattanaik, J)

O. Under the British rule though steps had been taken to make provision for special administration of the tribal areas but there had been no prohibition for transfer of government land in favour of a non-tribal within the scheduled area. (Para 238).

P. Under different laws and regulations operating in different tribal areas prior to coming into force of the Constitution there was restriction in relation to transfer of lands belonging to the tribals in favour of a non-tribal within the scheduled area but no such restriction was there so far as the government land was concerned. (Para 238).

Q. The legislative history and the debates in the Constituent Assembly culminating in engrafting of Schedule V of the Constitution conferring power on the Governor to make regulation for administration of tribal area were all aimed to prevent the tribals from exploitation of non-tribals and the prohibitions/restrictions were all in relation to the transfer *of lands belonging to the tribals in favour of non-tribals and it never intended to have any such provision in relation to government land. (Para 238).*

R. A combined reading of Article 244 and Schedule V of the Constitution would indicate that there is no constitutional obligation on the Governor to make regulation prohibiting transfer of government land in favour of a non-tribal within the scheduled area. (Para 238).

S. The word 'person' used in Section 3(1)9a) of the Andhra Pradesh Schedule Area Land Transfer Regulation as amended in 1970 has to be construed to convey the same meaning throughout the Section and the said expression does not include the State Government. (Para 238).

T. Neither the legislative history nor the object with which special power has been conferred on the Governor under Fifth Schedule to the Constitution make it necessary to construe the word 'person' in the first part of Section 3(1)(a) differently from the rest part of the Section so as to include State Government within the said expression. (Para 238).

U. Though under Section 2 of the Forest Conservation Act use of any forest land for any non-forest purpose is prohibited without the prior consent of the Central Government and as such mining activities being a non-forest purpose would attract the mischief of said Section 2 of the Conservation Act, but in the absence of any materials to conclusively come to the conclusion that the land over which the respondents are carrying on the mining activities form a part of the forest land, it would not be proper for this Court to issue any direction prohibiting the mining activities. At the same time it would be proper to direct the State of Andhra Pradesh through its Forest Department to examine whether the mining activities are being carried on over the forest land and if it comes to the conclusion that the lands do form a part of the forest land then immediate steps should be taken prohibiting continuance of the mining activities until the Central Government in exercise of power under Section 2 agrees to the same, and we accordingly so direct. (Para 238).

V. The petitioner has not been able to make out any case of violation of the provisions of the Environment Protection Act in the case in hand. (Para 238).

W. Section 11(5) of the MMRD Act being prospective in nature will have no application to the existing mining leases and, therefore, the leases of the respondents' can't be annulled on that score. (Para 238).

Referred: Waman Rao vs Union of India, (1981) 2 SCR 1; Manchegowda & Ors vs State of Karnataka & Ors, (1984) 3 SCC 301; Lingappa Pochanna Appelwar vs State of Maharashtra & Anr, (1985) 1 SCC 479; P. Rami Reddy & Ors vs State of Andhra Pradesh & Ors, (1988) 3 SCC 433; Madras Electric Corporation vs Boarland, (1955) 1 All ER 753; I.R.Commissioner vs Whiteworth Coal Co. Ltd., (1968) 2 All ER 91; Edgar B. Sims vs United States of America, 359 US 108: 3 L ed 2 d 66; State of Ohio vs Guy T. Helvering, 292 US 360: 78 L ed 1307; State of Georgia vs Hiram W. Evans, 316 US 159: 86 L ed 1346; United States of America vs Cooper Corporation et al., 312 US 600 : 85 L ed 1071; United States v. I.C.C., (1949) 337 US 426; Superintendent & Legal Remembrancer, State of West Bengal v. Corporation of Calcutta, (1967) 2 SCR 170; State Trading Corporation of India Ltd. vs.The Commercial Tax Officer & Ors, AIR 1963 SC 1811; Union of India vs Jubbi, AIR 1968 SC 360; Secretary, Jaipur Development Authority vs Daulat Mal Jain, (1997) 1 SCC 35; Shamsher Singh vs State of Punjab & Anr, (1974) 2 SCC 831; R.K. Jain vs Union

of India, (1995) 4 SCC 119; Delhi Transport Corporation vs D.T.C. Mazdoor Congress, AIR 1991 SC 101; Bandhua Mukti Morcha vs Union of India, (1984) 3 SCC 161; Subhash Kumar vs State of Bihar, AIR 1991 SC 420; Olga Tellis vs Bombay Municipal Corporation, AIR 1986 SC 180; C.E.S.C. Ltd. & Ors vs S.C.Bose & Ors, 1992 (1) SCC 441; Consumer Education and Research Centre vs Union of India, (1995) 3 SCC 42; Life Insurance Corporation vs Consumer Education and Research Centre, (1995) 5 SCC 482; Dalmia Cement Bharat Ltd. & Anr etc vs Union of India & Ors, etc, JT 1996 (4) SC 555; P.G.Gupta vs State of Gujarat & Ors, 1995 Supp.(2) SCC 182; M/s Shantistar Builders vs Narayan Khimlal Totame & Ors, (1990) 1 SCC 520; Chameli Singh & Ors vs State of U.P. and Anr, (1996) 2 SCC 549; Ahmedabad Municipal Coreporation vs Nawab Khan Gulab Khan & Ors, JT 1996 (10) SC 485; Birkdale District Electric Supply Company Ltd. vs Corporation of Southport, 1926 AC 355; Rederiaktiebolaget Amphitrite vs The King, (1921) 3 KB 500; Youngstown Sheet & Tube Company et al vs Charles Sawyer, 343 US 579; Lois P. Myers vs United States, 272 US 160; The State of Uttar Pradesh & Ors vs Babu Ram Upadhya, (1961) 2 SCR 679; Maru Ram etc. etc. vs Union of India & Anr, (1981) 1 SCR 1196; Narendra Kumar vs Union of India, (1960) 2 SCR 372; Fatehchand Himmatlal vs State of Maharashtra, (1977) 2 SCC 670; State of U.P. & Ors vs Hindustan Aluminium Corpn. and Ors, (1979) 3 SCC 229; K. Ramanathan vs State of Tamil Nadu & Anr, (1985) 2 SCC 116; Air India Statutory Corporation etc. vs United Labour Union & Ors. etc., 1996 (9) SCALE 70; State of West Bengal vs Union of India, (1964) 1 SCR 371; Reserve Bank of India vs Peerless General Finance & Investment Co. Ltd. & Ors, (1987) 1 SCC 424; C.E.S.C. Ltd & Ors vs Subhash Chandra Bose & Ors, (1992) 1 SCC 441; The State of Bombay vs R.M.D.Chamarbaugwala, 1957 SCR 874; Ishwar Singh Bindra & Ors vs The State of U.P., (1969) 1 SCR 219; Nedurimilli Janardhana Reddy vs Progressive Democratic Students' Union & Ors, (1994) 6 SCC 506; Printers (Mysore) Ltd. & Ors vs Asstt. Commercial Tax Officer & Ors, (1994) 2 SCC 434; Pushpa Devi & Ors vs Milkhi Ram (dead) by his Lrs, (1990) 2 SCC 134; Commissioner of Income-tax, Bangalore vs J.H.Gotla Yadagiri, (1985) 4 SCC 343; Dr. M. Ismail Faruqui & Ors vs Union of India & Ors, (1994) 6 SCC 360; Ashok Kumar Gupta vs State of U.P., JT 1997 (4) SC 251; T.M.Kanniyan vs Income-tax Officer, Pondicherry & Anr, (1968) 2 SCR 103; Queen vs Russell, (1992) 7 AC 829; P. Rami Reddy & Ors vs State of Andhra Pradesh & Ors, (1988) Supp. 1 SCR 443; Minverva Mills Ltd. & Ors vs Union of India & Ors, (1981) 1 SCR 206; D.S. Nakara & Ors. vs. Union of India & Ors., [1983 (2) SCR 165]; Excel Wear etc. vs Union of India & Ors, (1979) 1 SCR 1009; State of Karnataka vs Shri Ranganatha Reddy & Anr, etc, (1978) 1 SCR 641; Sanjeev Coke Manufacturing Company vs Bharat Coking Coal Ltd. & Anr, (1983) 1 SCR 1000; State of Tamil Nadu etc. etc. vs L. Abu Kavur Bai & Ors, etc, (1984) 1 SCR 725; Madhusudan Singh & Ors vs Union of India & Ors, (1984(2) SCC 381; Maharashtra State Board of Secondary and Higher Secopndary Education vs K.S.Gandhi, 1991 (2) SCC; J.P.Unni Krishnan vs State of A.P., (1993) 1 SCC 645; Subhash vs State of Bihar, AIR 1991 SC 420; State of Karnataka vs Appa Balu Ingale & Ors, (1995) Supp. 4 SCC 469; M/s Victoria Granites (P) Ltd vs P. Rama Rao & Ors, JT 1996 (9) SC 303; Virender Gaur & Ors vs State of Haryana & Ors, (1995) 2 SCC 577; Rural Litigation and Entitlement Kendra vs State of U.P., 1989 Supp.(1) SCC 504; Chhetriya

Pardushan Mukti Sangarsh Samiti vs State of U.P. & Ors, 1990 (4) SCC 449; Sachidanand Pandey vs State of West Bengal, (1987) 2 SCC 295; State of Bihar vs Murad Ali Khan & Ors, (1988) 4 SCC 655; M.C. Mehra vs Union of India & Ors, (1992) 1 SCC 358; Indian Council for Enviro-Legal Action vs Union of India & Ors, (1995) 3 SCC 77; Tarun Bharat Singh, Alwar vs Union of India & Ors, (1992) Supp. 2 SCC 448; Vellore Citizens' WElfare Forum vs Union of India & Ors, (1996) 5 SCC 647; State of H.P. & Ors vs Ganesh Wood Products & Ors, (1995) 6 SCC 363; M/s Colorock Pvt. Ltd, Vijaywada vs The Director of Mines & Geology, Govt. of A.P., 1983 3 ALT 39; M/s Anupama Minerals vs Union of India & Ors, AIR 1986 AP 225; M/s Yashwant Stone Works vs State of U.P., AIR 1988 All 121; Upendra Jha vs State of Bihar, AIR 1988 Patna 263; Ambalal Manibhai Patel & Ors vs State of Gujarat, (1986) 27(2) Guj.LR 1073; Ambika Quarry Works & Anr vs State of Gujarat & Ors, (1987) 1 SCR 562; State of M.P. & Ors vs Krishnadas Tikaram, (1995) Supp. 1 SCC 587; Tarun Bharat Sangh, Alwar vs Union of India & Ors, (1993) Supp. 3 SCC 115; State of Bihar vs Banshi Ram Modi & Ors, (1985) Supp. 1 SCR 345; Chatturam & Ors vs Commissioner of Income-tax, Bihar, (1947) FCR 116 = (1947) FLJ 92; Jatindra Nath Gupta vs The Province of Bihar & Ors, (1949) FLJ 225; King Emperor vs Benoari Lal Sharma, (1944) L.R. 72 I.A. 57; Attorney General for Saskatchewan vs Canadian Pacific Ry. Co., (1953) A.C. 594; Raja Jogendra Narayan Deb vs Debendra Narayan Roy & Ors, (1942) L.R. 69 I.A. 76; Girindra Nath Banerjee vs Birendra Nath Pal, (1927) I.L.R. 54 Cal.727; State of Bihar vs Banshi Ram, (1985) 3 SCC 643; Mabo and Others vs The State of Queensland, Commonwealth Law Reports Vol.175 (1992) at page 1; State of West Bengal vs Union of India, (1964) 1 SCR 371; Commissioner of Income-tax, Bangalore vs J.H.Gotla Vadagiri, (1985) 4 SCC 343; Suresh Chand vs Gulam Chisti, 1990 (1) SCR 186; Mohd. Shafi vs Seventh Additional District & Sessions Judge, Allahabad & Ors, 1977 (2) SCR 464; Raghubans Narain Sigh vs The Uttar Pradesh Government through Collector of Bijnor, 1967 (1) SCR 489; Farrell vs Alexander, (1976) 2 ALL England Report 72; Shamrao Vishnu Parulekar vs District Magistrate, Thana, 1956 SCR 644; Madras Electric Supply Corporation Ltd. (in liquidation) vs Boarland (Inspector of Taxes),All England Law Reports, 1955; Maharaj Singh vs State of U.P. & Ors, (1977) 1 SCR 1072; Appiin vs Race Relations Board, (1974) 2 All ER 73; State of Ohio vs Guy T. Helvering, 85 U.S. Supreme Court Reports 78 Law Edition 1307; United States of America vs Cooper Corporation et. al, US Supreme Court Reports 85 Law Edition 1071; Divisional Forest Officer and Others vs S. Nageswaramma, (1996) 6 SCC 442.

K. Ramaswamy, J.— Leave granted.

2. These appeals are directed to resolve mutually inconsistent law adumbrated by two Division Benches of Andhra Pradesh High Court. The appeals arising from SLP (C) No. 17080-81/95 are filed against the judgment passed on April 28, 1995 in Writ Petition Nos. 9513/93 and 7725/94 in which the Division bench has held that the Andhra Pradesh Scheduled Area Land Transfer Regulation (1 of 1959), as amended by Regulation II of 1970 (for short, the 'Regulation') and the Mining Act (67 of 1957) do not prohibit grant of mining leases of Government land in the scheduled area to the non-tribals. The Forest Conservation Act, 1980 (for short, the 'FC

Act') does not apply to the renewals. The Andhra Pradesh Forest Act, 1967 also does not apply to the renewal of the leases. It, accordingly dismissed the writ petitions filed by the appellant challenging the power of the Government to transfer the Government land situated in the tribal area to the non-tribals for mining purpose.

3. In the appeal arising from SLP (C) No. 21457 of 1993 filed by Hyderabad Abrasives and Minerals, another Division Bench, earlier had taken dramatically the opposite view and held that mining leases are illegal. The word 'person' used in Section 3 of the Regulation includes Government. Any lease to the non-tribals even of a Government land situated in scheduled area is in violation of Section 3 and so is void. Equally, it held that a mining lease in a forest area for non-forest purpose or renewal thereof, without prior approval of the Central Government, is in violation of Section 2 of the FC Act. Accordingly, the Division bench directed the Government to prohibit mining operations in scheduled area except that the mines stacked on the surface be permitted to be removed after obtaining proper permits. This decision, though earlier in point of time, was not brought to the notice of later Bench mentioned above.

4. The admitted facts are that Borra reserved forest area along with its environs consisting of 14 villages, is the notified scheduled area in Annanthagiri Mandal of Visakhapatnam District of Andhra Pradesh. The State Government granted mining leases in this area to several non-tribal persons. K. Appa Rao, respondent No. 13, was granted mining lease in that reserved forest area. Most of the area granted to M/s. Perclase India Ltd., respondent No.7 falls in reserved forest area. M/s. Unirock Minerals Pvt. Ltd., respondent No. 8 had 125.30 acres in the reserved forest area and 45.70 acres in the non-reserved forest area. M/s. Kalyani Minerals, respondent No. 10 had 48.00 acres in the reserved forest area and 32 acres in non-reserved forest area. One M. Seethrama Swamy was granted mining lease of an extent of 300 acres in Borra reserved forest area. Sri R.K. Deo is also having mining lease in that area. Respondent No.9 is said to be the legal heir of M/ Seetharama Swamy. These facts are admitted in the counter-affidavit filed by the Government.

5. It is also an admitted fact that Ananthagiri Mandal in which the mining areas are situated, is within the scheduled area. The tribal people from tribal groups are inhabiting therein. Two mining leases were granted to one Chalpati Rao, respondent No.11 for graphite to an extent of 50 acres in Nandkote Reserve Forest for a period of 20 years on August 26, 1971. The lease deed was executed on January 24, 1972 and expired on January 23, 1992; it is stated that thereafter mining operations are not being carried on. Similarly, mining lease for an extent of 111 acres of land situated in Chimidipalli and Saripalli villages of Ananthagiri Mandal, was granted on August 29, 1974. The lease was executed on December 20, 1974 for a period of 20 years which expired on December 19, 1994. Mining lease for Andhra Phosphates (P) Ltd. was granted to an extent of 271.544 hectares in Y. Seetharampuram, Veduruvada Reserved Forest on March 23, 1957 for 20 years. The lease deed was executed on June 10, 1957 which was renewed for 20 years on May 2, 1974. The renewed deed was executed on the even date which would continue upto June 9, 1997. As stated earlier, K. Apparao, respondent No. 13, was granted mining lease for 20 years on July 26, 1978 which was executed on January 24, 1979. It is due to expire on January 23, 1999. But, it is stated that at present he is not working out the mining operations. Respondent No. 14, M. Venkatapathi Raju was granted mining lease for 13.84 acres for yellow Ochra in unsurveyed revenue poramboke, in Konapuram, Ananthagiri Mandal for a period of 20 years on April 4, 1980. The lease deed was executed on April 26, 1981 and is to expire on April 25, 2001. It is claimed that the lease is not being worked out and it is said to have lapsed. The lease granted to M/s. Visaka Mines & Minerals, respondent No. 15, is said to be in non-surveyed area in Mandaparti village of Ananthagiri Mandal on July 20, 1978 for a period of 20 years. The lease deed was executed on December 18, 1978 and it would expire on December 17, 1998. They are working out their mines. Another lease was granted for 130 acres in reserved forest area of Sivalingam village of Ananthagiri Mandal on September 20, 1977 for a period of 20 years which expires on December 30, 1997. It is stated that the lease had lapsed since it was not being worked out, w.e.f. February 9, 1988 as per G.O.Ms. No. 295 dated June 6, 1989. Associated Mica Exports, respondent No. 16 holds two leases for 50 acres in Dumbriguda village of Ananthagiri Mandal for a period of 20 years granted on March 13, 1986. The lease was executed on September 11, 1986 and it is to expire on September 10, 2006. It is stated that lease is not being worked out at present. They had another lease for 10 acres in Borra group of villages for 20 years granted on October 20, 1983 and the lease deed was executed on November 21, 1983. The lease is to expire on November 20, 2003. It is stated that the mining is not being worked out at present. Respondent No. 17, N. Madan Mohan Reddy had a lease in Mallagumuru village of Ananthagiri Mandal. The extent of the land has not been mentioned but the lease was granted on July 4, 1984. The lease was executed on September 5, 1984 and it is to expire on September 4, 2004. It is stated that the mine is not being worked out at present. M/s. Trowall Cement Ltd. obviously got it transferred from N. Madan Mohan Reddy to whom lease was granted for 20 years in G.O.Ms. No. 303, Industries and Commerce on July 9, 1984 for a period of 20 years. The lease deed was executed by Madan Mohan Reddy on January 7, 1985 and is due to expire on January 6, 2005. It is stated that the mining is not being worked out and steps are being taken to declare it as a lapsed lease. It is the case of the appellant that the above lease was sub-leased to M/s. Indian Rayon Industries Ltd., respondent No.19 but in the affidavit filed by the Government, it is said that no steps are taken to win over the mine from the leased area. On the other hand, in the counter-affidavit filed on behalf of respondent No. 19, it is admitted that the mines are being worked out and that high purity calcite with minimum sillica content is their product. Calcite mine is available in Visakhapatnam District at a short distance of 100 kms. from their factory situated in Visakhapatnam. One M. Laxminarayan was the lessee of an extent of 21.56 acres of land in Nimmalapadu village in Ananthagiri Mandal which is valid upto May 31, 2005. Another lease of 37.895 hectares in Ananthagiri Mandal was granted for a period of 10 years. The lease is valid upto July 3, 1996. Respondent No. 19 had transfer of the said lease in its favour in G.O.Ms. No. 4, Industry and Commerce dated January 5, 1993 and they are working out the mines. M/s. Birla Periclase is a subsidiary of respondent No. 19. It is stated in the affidavit filed on behalf of the Government that 21.56 acres of land containing mica, calcite, quartz and yellow ochra in Nimmalapudu village which is the subject matter of the original lease dated November 17, 1984 for a period of 20 years had by M. Laxminarayana, was transferred to respondent No. 19. It was stated that the same has further been transferred in favour of M/s. A.P. Mineral Development Corporation Ltd. on December 20, 1994 by G.O.Ms. No. 456 dated December 7, 1994. The latter is a State Government Undertaking but that is not so stated in the counter-affidavit filed on behalf of respondent No.19. It is sought to be justified that M. Laxminarayana, Respondent No. 20, has a legal right to assign the lease in favour of Respondent No. 19. It is also admitted in the Government's counter-affidavit that by operation of Section 11 (5) of the Mine and Mineral (Regulation and Development) Act, 1957 (for short, the 'Mining Act'), as amended by State Act, on and from August 14, 1991, no mining leases in the scheduled area should be granted in favour of non-tribals. It is also admitted that tribals have their patta lands in five enclosures and have their right to cultivate those lands. It is the case of the appellant that after re-survey, the entire area was identified as reserved forest areas or at any rate is a forest area in scheduled area.

6. On this factual matrix, the appellant-Society claiming to protect the interests and life of the scheduled tribes in the area, filed the writ petitions questioning the power of the Government to grant mining leases in favour of non-tribals in the scheduled area, in violation of the Regulation which prohibits transfer of any land in scheduled area to a non-tribal. The Division Bench of the High Court has held that the Regulation does not prohibit transfer of the Government land by way of lease to the non-tribals. The word 'person' in Section 3 of the Regulation is applicable to natural persons, namely, tribals and non-tribals. The Regulation prohibits transfer of the land in scheduled area by a tribal to a non-tribal natural persons. The leases granted in accordance with the provisions of the Mining Act to non-tribals are valid. The FC Act was not violated by grant of leases or renewal thereof. Therefore, the writ as sought for, was not available. Resultantly, the writ petitions were dismissed.

7. In the appeal of M/s. Hyderabad Abrasives and Minerals, the admitted facts are that the appellant was granted mining lease for 20 years in 1974 for mining leatarite situated in Peddamaredumilli Reserved Forest Area in East Godavari District. The total extent of the land leased was 318 acres out of which it was carrying on mining operation in 42 acres. Similarly, other persons were also granted mining leases in the reserved forest area in East Godavari District. Consequently, M/s. Shakti, the voluntary organisation filed the writ petition in the High Court questioning the power of the Government to grant mining leases in violation of Section 3 of the Regulation and the F.C. Act. The lease expired in 1994. The Division Bench held that by operation of the prohibition contained in Section 3 of the Regulation and Section 2 of the FC Act, the appellant is not entitled to mining operations. However, since he had already broken up the mining, the excavated mine on the surface may be removed on obtaining permissions from the appropriate authorities. Feeling aggrieved, the appellant has filed the above appeal.

8. The primary questions in these cases are: whether the Regulation would apply to transfer of Government land to a non-tribal; whether the Government can grant mining lease of the lands situated in scheduled area to a non-tribal?; whether the leases are in violation of Section 2 of the FC Act?; and whether the leases are in violation of Environment Protection Act, 1986 (for short, the 'EP Act')? It is stated in paragraph 3(c) of the Petition of Samatha that the Borra Reserve Forest area was part of the domain of the Rajah of Jeypore and from time immemorial, it was a tribal area occupied by tribal villages. They have pattas in their favour and do cultivation. In 1967, 14 villages were declared as Borra Reserved Forest. About 250 tribal families settled in 14 villages have in their occupation, 436 acres of land in five enclosures. They are situated in Ananthagiri Mandal. In the counter-affidavit filed on behalf of respondent No. 10, M/s. Kalyani Minerals, it is admitted that Borra caves may be as old as million of years. It is admitted that the "entire area around Borra caves is thickly forested". In the counter-affidavit filed by the District Forest Officer, respondent No.4, it is admitted that Ananthagiri Mandal is a scheduled area and the tribals belong to diverse denominations. It is also one of the important hill regions of the Eastern ghats and is known not only for the diversity of its flora and fauna but also for the richness of mineral deposits. It is also rich in forest wealth and the minerals. It is their contention that the forest wealth in this area is the national asset.

Agriculture- a means of livelihood, succor for social justice and base for dignity of person.

9. *Agriculture is the main part of the economy* and source of livelihood to the rural Indians and a source and succor for social status and a base for dignity of person. Land is a tangible product and sustaining asset to the agriculturists. In *Waman Rao v. Union of India* [(1981) 2 SCR 1] a Constitution Bench had observed that India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in social system". The strip of land on which they till and live assures them equal justice and "dignity of their person by providing to them a near decent means of livelihood". Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity.

10. Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source for economic enpowerment. Therefore, the tribes too have great emotional attachment to their lands. The land on which they live and till, assures them equality of status and dignity of person and means to economic and social justice and potent weapon of economic enpowerment in social democracy.

11. Ninety per cent of the Scheduled Tribes predominantly live in forest areas and intractable terrains 95 per cent of them are below poverty line and totally depend upon agriculture or agriculture based activities and some of them turn out as migrant construction labour due to their displacement from hearth and home for the so-called exploitation of minerals and construction of projects. As per 1991 Census, in Andhra Pradesh the population of the Tribes was 41.99 lakhs. They adopted traditional shifting cultivation (Podu or Jhoom), since they are poor and illiterate and away from winds of modern agricultural technology and economy. Such cultivation is predominantly prevalent in Andhra Pradesh, Bihar, Orissa, Madhya Pradesh, Maharashtra, Gujarat, Rajasthan, North-eastern States and some parts of Uttar Pradesh. According to this practice, an area covered with vegetation is burnt out to serve as manure. Cultivation is done for a year or two and then the area is abandoned. Another area is cleared in a similar manner and again abandoned. Vegetation regenerates in the abandoned area and after a lapse of 8 to 10 years, the area is again cleared and burnt and, thus, shifting cultivation is carried on. This cycle repeatedly goes on. Due to pressure on land this shifting cultivation has now been abandoned and the Tribes are settling to cultivate crops in fixed holdings.

Plight of the Tribes.

12. Detailed study in this behalf and of their exploitation has been conducted by sociologists and anthropologists, the foremost notable of them being Prof. C.V.F. Haimendrof and Arher. Many others equally have evinced keen interest and investigated into living conditions of the tribes, their culture and customs, etc. which establishes that initially the tribals had held large tracts of lands as masters and had their own rich culture with economic status and cohesiveness as compact groups. The policy adopted by the rulers encouraged non-tribals to immigrate in large number and settle down in tribal areas. Governments compelled tribal Chieftains to permit non-tribals to take hold of revenue administration, which led to the slipping of lands from the hold of the tribes to the non-tribals. In the "Tribes of India - The Struggle for Survival". Prof. Haimendrof has graphically explained diverse methods by which the tribals were deprived of their lands. Numerous methods adopted to exploit them having become unbearable, they rebelled against their exploitation. Inderelli [Andhra Pradesh] police firing in which hundreds of innocent tribals were killed, is one of the latest events which would depict the enormity of their exploitation. By laying the railway tracks and roads as means of communication by the British rulers, the tribal immigrants who, with limited means, came in large number in search of livelihood and settled down in the agency areas and acquired large holdings by exploitation of the tribals. Dr. P.V. Ramesh, IAS, Director, Tribal Welfare in his article "Land Reforms Land Transfer in Scheduled Area" in a seminar organised by A.P. Judicial Academy and published by it as "Scheduled Tribal and Social Justice" page 178 at 202 has stated that in Utnoor Division of Adilabad District a tribal in whose name, 148 acres was recorded as owner, was declared as surplus land-holder under the Land Reforms Act and the only 5 acres of land in his actual possession and enjoyment was taken by the Government as surplus land. In contract, Izaradars surrendered Government land as they entered their names in revenue records as owners and claimed compensation under the Land Acquisition Act for 742 acres.

13. The tribal economy was simple but with the gradual contact with the non-tribals they started taking loans. The wiles of money-lenders and traders exploited their innocence. Honest, truthful and hard working tribals become prey for the greed and exploitation by non-tribals. They charged maximum rate of interest etc. for fringe money or gains or goods lent to them. Tribals had to repay disproportionately in three or four fold in kind. Exorbitant rate of interest was charged and repayment collected in kind, i.e., the produce in three or four-fold. In the "Land Alienation and Restoration in Tribal Communities in India" edited by S.N. Dubey and Ratna Murdia, [Himalaya Publishing House], compilation of articles presented and read out at a Seminal organised by Tata Institute of Social Science in which bureaucrats and social scientists participated. B. Danam, IAS, then Project Officer, ITDA, Khammam, had highlighted in his paper about diverse modes of exploitation by money-lenders of the tribals in Andhra Pradesh. They were: short-term loan at an exorbitant rate of interest (Kandagutha), the repayment of which was made in kind, i.e., harvest produced from a particular extent of land; the medium-term loan on the security of the immovable property, repayable with compound interest at yearly or half-yearly rests. Third mode was lease of land against a loan for a fixed number of years (Tirumanam) during which period the tribals have to cultivate their land, raise the crop and deliver the entire produce to the money-lender; by usufructuary mortgage, the money-lender remains in possession and enjoys the produce from the land for a fixed number of years or till the principal sum is repaid; by advancing cash and kind loans (Namu) and lending commodities like foodgrains mostly for sustenance during the lean months or for seedlings, on the condition that the same would be repaid in full along with flat rate of interest at the time of harvest and in default payment should be with compound interest; in case of further default, the accumulated arrears get merged with the principal, i.e., by way of compound interest. The other types of money-lending extend to petty loans or selling clothes on credit to the tribals during the lean months on the condition that it would be paid in full at the time of harvest and in default the money-lender would take over the land by threat of physical force.

Legislative intervention - Enforcement ineffectiveness.

14. The Ganjam and Vizagapatnam Act of 1839 declared the Agency Areas of the Madras Presidency, comprising parts of southern Orissa and seven present Andhra Pradesh districts for special administration. In 1874, the Scheduled Districts Act XIV (Central Act) was passed. Thereunder, Scheduled districts were defined to mean the territories mentioned in the First Schedule and parts thereof; they also include any other territory to which the Secretary of State for India by resolution in Council, may declare. Subsequently, the Act was extended to the Taluk of then Badrachalam in East Godavari District which is now a part of Khammam District together with the districts covered under 1839 Act. The principal Government issued rules prescribing the procedure to be followed by the officers appointed thereunder to administer Agency Tracts. Later on, the Agency Tracts and Land Transfer Act 1 of 1917 came to be passed. Thereunder, to mitigate the hardships of the tribals from the wiles of money-lenders and other migrants from plain area, provision was made so that rate of interest would not exceeding *(sic)* 24% per annum and compound interest would not be charged nor any collateral advantage would be taken by the money-lenders. The total interest allowed or decreed should not exceed the principal amount. The "Scheduled Districts" defined in 1874 Act were reconfirmed in 1917 Act. Section 4 thereof prohibited transfer of land in the Agency Tracts which read as under:

> "4. Transfer of Immovable property by a member of a hill tribe.
>
> (1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency Tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.
>
> (2) Where a transfer of property is made in contravention of sub-section (1) the Agent or any other prescribed Officer may on application by any one interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs.
>
> (3) Subject to such conditions as may be prescribed as appeal against a decree or order under sub-section (2) if made by the Agent shall lie to the Governor in Council and if made by any other officer shall lie to the Assistant Agent or to the Agent as may be prescribed. "Montague and Chelmsford Report, 1918 briefly touched the administration of tribal areas and political reform and excluded them from the reformed provincial Governments. Govt. of India Act, 1919 divided the area into two parts "wholly excluded and partially excluded areas for reform". The former were small and the latter were given joint responsibility of the Governor and the Governor General in Council."

15. Montague Chelmsford Report of 1918 suggested that the backward area where primitive (tribal) live should be excluded from proposed political reform and administration was entrusted to the Governors of the Provinces.

16. Pursuant to Simon Commission Report, the Government of India Act, 1935 dealt with excluded and partially excluded areas as per Order 1936 issued under Section 91 of Government of India Act, 1935. Simon's Report is worth-extracting here and reads thus:

> "There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural: and, secondly, they were likely to get into the "wilies of the moneylenders". The primary aim of Government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas."

17. Therein also, "Scheduled Districts" defined in 1874 Act were treated as excluded and partially excluded areas. The administration thereof was exclusively vested in the Governor of the Province under Section 92 of Government of India Act, 1935 sub-sections (1) and (2) which are relevant for our purpose read as under:

> "92. (1) the executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.
>
> (2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature, or of the Provincial Legislature or any existing Indian Law, which is for the time being applicable to the area in question. Regulations made under this sub-section shall be submitted forthwith to the Governor General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor General as they apply in relation to Acts of a Provincial Legislature assented to by him."

18. The Government of India (Adoption of Indian Laws) Order, 1937 repealed 1874 Act and brought excluded and partially excluded area directly under the governance of the Governor under Section 92 of the Government of India Act, 1935. Thus they became the Scheduled Areas by virtue of the Scheduled Areas (Part 'A' States) Order; 1950 issued by the President of India. After the advent of the Constitution, Fifth and Sixth Schedules were engrafted as part of the scheme of the Constitution by the founding fathers. Fifth Schedule empowers the President of India who thereunder issued Scheduled Areas (Part 'A' States) Order, 1950 declaring specified areas therein to be Scheduled Areas within the States specified in part 'A' of the First Schedule to the Constitution of India. Therein also East Godavari, West Godavari and Visakhapatnam Agencies (Vizianagram and Srikakulam

Districts are part of it) were declared to be Scheduled Areas in Madras Province. Equally, by Scheduled Areas (Part 'B' States) Order, 1950 which became effective from December 7, 1950, the President exercised the power declaring certain specified areas as Scheduled Areas in Part 'B' States including the State of Hyderabad (Adilabad, Karimnagar, Nizamabad, Warangal, Khammam, Mehboob Nagar Districts).

19. It would, thus, be clear that right from the inception of the Colonial Administration, the agency areas were treated distinctly from other areas. Tribals were protected from exploitation; their rights and title to enjoy the lands in their occupation and their autonomy, culture and ecology were preserved; infiltration of the non-tribals into tribals area was prohibited. Sugalis, i.e., khanabadosh, non-tribals, by migration became in due course, tribals. Even those emigrant non-tribals were prohibited to purchase the lands in agency areas from the tribals except with the prior sanction of the officer appointed by the Government in that behalf. However, with the connivance and fabrication of revenue records, non-tribals got hold of the lands and exploited the tribals.

20. Prof. Haimendrof has explained how notoriously the migrants swelled in number in the agency areas in Telengana of Andhra Pradesh and dispossessed the tribals from their holdings with impunity and prevented them from enjoying right over their lands or unlawfully dispossessed them in collusion with the Patwaris, Deshmukhs or Deshpandes, the lower level local officials. He has given the comparison of population at page 57 thus:

> "Despite all such obstacles the allocation of land to the tribals of Adilabad which began in 1944 made good progress. By 1945 a total of 45,417 acres of land had been granted to 3,144 tribals, and by 1949 the amount of land assigned on patta to tribals had risen to 160,000 acres and the number of beneficiaries to 11,198. The work continued until about 85 per cent of the tribal householders of Adilabad adequate holdings of cultivable land."

At page 59, he has stated that:

> "Visual impressions of the process of ethnic and cultural change are supported by demographic figures. While in 1951 the population of Uthur Taluk was only 34,404, the majority of whom were tribals, by 1961 it had risen to 55,099 and by 1971 to 93,823. No official census figures are available for later years, but according to a malaria survey of 1977 the population of the taluk had then reached a total 112,000. This phenomenal increase is clearly due to immigration, and all the new comers are non-tribals. The change in the composition of the population is reflected in the figures for tribals in individual circles. Thus in the Marlavai Circle, which in 1941 was almost totally tribal, the percentage of tribals in 1961 was still 90.38 per cent, but by 1971 it had dropped to 65.52 per cent, a figure which undoubtedly has diminished since then."

21. Narrating the event (after his revisit), he has stated at pages 59-60 thus:

> "On 7 December 1976, Kumra Boju of Kerimeri came to see me in Kanchanpalli and told me the following story:
>
> My father Somu owned fifteen acres of patta land, but for the last thirteen years Rama Gaudu of Asifabad [a man of toddy-tapping caste] has been cultivating this land. When my father died I was a small child, and Rama Gaudu occupied our land. Some time ago I applied to M. Narayan, the Special Dy. Collector, for restoration of my father's land,. The Dy. Collector decided the case in my favour and restored the land to me. I was very happy and ploughed the land in

> preparation for sowing jawari. But when I was ready to sow Rama Gaudu, supported by some villagers of Keslaguda, stopped my cultivating. Then the Tahsildar, the revenue inspector, and the Patel came to the village and told me that my father's land was mine by right. But at the same time they advised me not to cultivate that land, but to occupy instead of adjoining field which belongs to a Muslim. How could I do this? Then Rama Gaudu brought some men and sowed on my land. Moreover Rama Gaudu had reported to the police that I had illegally ploughed his land. So the Sub-Inspector of police came to my house with some constables and wanted to arrest me. But in the end they did not take me to Asifabad. Rama Gaudu has occupied also the patta land of three other Gonds, who are my mother's brothers. They all died but they have sons who have a claim to their land. Now none of us has any land of our own because Rama Gaudu has all of it taken away."

22. This is only a tiny iceberg of several instances. He has highlighted the gross injustice done to the tribals. The book contains full details which need no recounting here to avoid needless burden.

23. Dr. G.P. Reddy at pages 66-67 of his book "Politics of Tribal Exploitation" has stated thus:

> "These non-tribal cultivator immigrants enjoyed liberal concessions. They were assigned land just for asking even waiving land revenue. Many of them were also conferred with right of Patel and Patwari. They were encouraged not only to establish new villages but also to settle in already well-established Goa villages. In this process the aboriginals gained nothing but became mute witnesses to the process set in by the rulers which ultimately pauparised the tribals, turning them from land owners to agricultural proletariat."

24. Writing about the non-tribals acquiring interest in the land in the tribal areas of Adilabad, Sethumadhava Rao has stated that:

> "Where land outside the forest was vacant it was readily granted Patta to the non-tribals. The Gonds too had an opportunity of acquiring Patta rights in the land but they were slow to understand that they would suffer if they did not take advantage of these concessions. The new Watandars made a subtle use of their office as village headmen to evict the original possessors or take lands vacated by them for themselves."

25. Another *modus operandi* for evicting the tribals who were cultivating the lands was by treating them as Sivaijamabandi, i.e., treating as unauthorised occupants. A cultivator who held land under Sivaijamabandi tenure is liable to eviction at any time. The tribals who were owners under the law were treated as unauthorised occupants by manipulation of revenue records. The tribals who could not understand the meaning of Patta rights could not be expected to understand the meaning of Sivaijamabandi. In many cases, though tribals had been cultivating the lands for several decades and generations, they were purposefully categorised as Sivaijamabandi, and were evicted. Their lands were assigned to non-tribals. It is ridiculous even to classify the lands held by tribals as Sivaijamabandi just because these people lacked knowledge of the nature of their rights over their lands.

26. Traditionally, the tribals of the area acquired absolute right over the land for cultivation the day they started clearing new patches of forest. Prof. Haimendrof has narrated hundreds of such cases wherein the poor tribals had complained to him as to how they had lost their lands because of wrong and false entries made in the land records by the Patwaris. Even till recently, the records were not maintained properly. This gave scope for the manipulation both by the Patwaris as well as by the petty revenue officials. This manipulation of records took place mainly due to corrupt practices.

27. Dubey's compilation gives first-hand account given by I.A.S. officers on the field representing Andhra Pradesh, Bihar, Gujarat, Maharashtra, represented then by K. Padmanabhaiah, the present Home Secretary, Govt. of India, Orissa, M.P. Rajasthan and West Bengal and they had given graphic first hand account of the magnitude of the problems of land alienations, causes of exploitation. They pointed out urgent need for restoration of the lands to the tribals. Dr. G. Prakash Reddy from ICSSR surveyed the problems once again and has graphically explained it in his "Politics of Tribal Exploitation" [Mittal Publication.]. "The Khonds and Jaungs in Andhra Pradesh, Hand Book for Development" by Dr. Ramakant Nath, B.M. Boal and N. Soreng tells the plight of, and the need for restitution of the land to and rehabilitation of. Orissa tribes. The Reports of the Commissioner of SCs. and STs., 1980-81 and 1984-85 also emphasise the urgency of the problem. As in the year 1995, in Andhra Pradesh, the non-tribals are in possession of 7,51,435.66 acres in scheduled areas of A.P. State (Vide page 192 of Scheduled Tribes and Social Justice).

28. Like in Madras province, in Bihar, the Chota Nagpur Tenancy Act, 1908 prohibited transfer of lands by sale etc. except with the previous sanction of the Deputy Commissioner. The Bombay Province Land Revenue Code, 1879 also prohibited transfer of land from a tribal to a non-tribal without the permission of the District Collector. Similarly, the Chota Nagpur Tenancy Act, 1908, Santhal Pargana Tenancy (Supplementary Provisions) Act, 1959 and the Bihar Scheduled Areas Regulations, 1969 also prohibit the alienation of land of the tribals. These regulations also provide for restoration of alienated land to the tribals or when converted for urban use, to give them equivalent lands. As early as in 1901, in Gujarat, some measures of protection were provided (when it formed part of the Bombay Province) by amendment of Sections 73-A and 79-A in the Bombay Land Revenue Code, 1879, and imposed ban on transfer of land of tribes in those scheduled village in which survey and settlement had not been introduced without previous permission of the Collector. The Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 and the Maharashtra (Restoration of Lands to Scheduled Tribes) Act, 1974 also prohibit alienation and ensure restoration of alienated lands to the tribes. Dr. B.L. Maharda, IAS, a bureaucrat of Rajasthan Cadre, in his "History and Culture of Giriasias" of State of Rajasthan, has narrated the similar problems of tribals.

29. The Regulation prohibits absolutely the transfer of land in scheduled area of Andhra Pradesh between tribals and non-tribals or non-tribals *inter se*. In 1971, an amendment was made to exempt hypothecation of lands by tribes to the Co-operative Land Mortgage Banks and other financial institutions approved by the Government, subject to certain conditions. In Assam, the Assam Land and Revenue Regulation Act, 1964 was enacted. In Himachal Pradesh, the H.P. Transfer of Land (Regulation) Act, 1968 was made. In Karnataka, the Bombay Tenancy and Agricultural Land Act, 1948 was made applicable in Bombay region of the Karnataka State. The Mysore Land Revenue (Amendment) Rule, 1960 was suitably amended imposing restriction or alienation of the lands allotted to the Scheduled Tribes and Scheduled Castes without prior permission of the Government. In Kerala, the

Kerala Land Reforms Act, 1963 contains similar provision. The Kerala Scheduled Tribes (Restriction of Transfer of Land and Restoration of Alienation lands), Act, 1975 was enacted for the same object which has recently been amended by a bill, details whereof are not available. Madhya Pradesh, the M.P.L.P. Code, 1959, under Sections 165(6) and 168(1), prohibits alienation of land and remedy of restoration thereof is provided. In Manipur, the Manipur Land Reforms and Land Revenue Act, 1970 was made. Similarly, the Orissa Scheduled Areas (Transfer of Immovable Property) Regulation and also Orissa Land Reforms Act, 1960 were made for the same purpose. The Rajasthan Tenancy Act, 1955, as amended in 1956, prohibits such transfer of lands. In Sikkim, Sikkim Revenue Order, 1977 and Sikkim Agricultural Land Ceiling and Reforms Act, 1977 are enforced. Equally, the Madras Cultivating Tenants Protection Act, 1955 provides the same relief. In Tripura, Tripura Land Revenue and Land Reforms Act, 1960 imposes similar restrictions. In Uttar Pradesh, the U.P. Land laws (Amendment) Act, 1982 was made though its implementation was stayed by the High Court.

30. The above bird's eye survey discloses the enormity of the yawning gap between making of the Acts and their proper enforcement. The magnitude of the problem is of national importance which needs to be tackled and solved by Parliamentary law and effective enforcement.

31. As we have seen from the legislative history, from the beginning of the British rule in India, the Legislature has adopted the policy to exclude some areas totally and some partially from the governance through the Executive Council and given power to the Governor of the Province and the Governor General/Viceroy to administer them with their special responsibilities. The partially excluded areas had the dual control by the Executive with primacy given to the Governor of the Province to apply or to exclude the application of the laws made by the Legislature or the Executive Council to the partially excluded scheduled areas. In either event the object was to prevent the tribals to get into the wiles of the money-lenders and preservation of their property and customs and to allow the tribals autonomy of their living in accordance with their customs and culture. Until the Simon Commission, the legislative protection was not available in that behalf. The Simon Commission found it necessary to bring the tribals to the main-stream of national life. In consequence, tribal area was to be brought under the direct administration of the elected governments by encouraging education, self-reliance and the provincial Government were to devote special attention for their upliftment. But the scheme was not given effect to in the Constitution of India Act 1935. As is seen, Sections 91 and 92 of the Government of India Act and the Cabinet Mission Statement of May 16, 1946 emphasised the special attention on the tribal areas.

32. From this perspective, we are required to consider the debate in the Constituent Assembly and the draft statements by the two Committees, one for the North-east area now called Sixth Schedule and the rest of the areas covered under Fifth Schedule to the Constitution. The Draft Constitution on Fifth Schedule, presented by Dr. Ambedkar related to Draft Articles 215A and 215B making provision for the administration and control of scheduled areas and Scheduled Tribes. Emphasis was laid therein on the creation of the Tribal Advisory Council to assist the Governor or the Ruler of each State *having scheduled area therein*, who are required to submit annual report to Government of India regarding the administration of scheduled area in that State, so that the executive power of the Union shall extend to that area to give directions to the State as to the administration of the said area. Draft Part II, clause 5 relates o law applicable to scheduled area and clause (a) of sub-clause (2) of Clause 5 postulated, prohibition or restriction on the transfer of land by or among members of the Scheduled Tribes in such area; clause (b) regulate the allotment of the land to members of the Scheduled Tribe in such area and clause (c) regulate by person who lend money to members of the Scheduled Tribes in such area. Sub-clause (3) of Clause 5 gives power to the Governor or Ruler to amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question. The draft report contained provision for allotment of the lands to the non-tribals. The report dated August 18, 1947 indicates that areas like the Madras and Orissa agency still need to be of simplified type which does not expose them to the complicated machinery of ordinary law course vide Shiv Rao's study. It is provided at pp. 755-56 thus: As regards the allotment of new land for cultivation or residence, however, "we are of the view that the interest of the tribal need to be safeguarded in view of the increasing pressure on land everywhere. We have proceeded accordingly that the allotment of vacant land belonging to the State in scheduled area should not be made except in accordance with special regulation made by the Government on the advice of the Tribal Advisory Council". In the joint report on the partially excluded areas other than Assam and North-east frontier dated August 25, 1947 the above finds place. As per the minutes of the advisory committee dated December 7, 1947 it was felt that the amendment should be made after discussion in the Constituent Assembly. In the revision of Articles qua allotment of land to non-tribals was retained. However, after authorisation given by the Constituent Assembly to make necessary restructuring of the Fifth Schedule as explained by Dr. Ambedkar, the Draft was amended excluding all references to the allocation of land of tribals to the non-tribals with no amendment proposed by any member vide Vol. 9 C.A.d., pp. 965-1001.

33. It would, therefore, be seen that before the Draft Constitution became paramount law and the Fifth Schedule as its integral part, the members of the constituent Assembly deliberated to protect land, the precious asset to the tribals, for their economic empowerment, economic justice, social status and dignity of their person by retention of the land with the tribals not only belonging to them but also allotment of the Government land. The proposal for allotment of the Government land to the non-tribals though was initially proposed but was ultimately dropped. After re-structuring Fifth Schedule, as presently found, the specific provision in the draft report to allot land to non-tribals was omitted which was accepted by the members of the Constituent Assembly without any demur or discussion.

34. The draft Constitution 1948, clause (6) as originally proposed reads as under: "(i) alienation of allotment of land to non-tribals in Scheduled Areas, it shall not be lawful for a member of Scheduled Tribes to transfer any land in person who is not a member of the Scheduled Tribes; (ii) no land in scheduled area vested in the State within such area shall be allotted to person who is not a member of the Scheduled Tribes except in accordance with the rules made in that behalf by the Governor in consultation with the Tribal Advisory Council for the State." The text ultimately approved by the Constituent Assembly as part of the Constitution reads as under:

> "(1) The Governor may make regulations for the peace and good government of any area in the State which is for the time being a scheduled area.
>
> (2) In particular and without prejudice

> to the generality of the foregoing powers, such regulations may:-
>
> (a) prohibit or restrict the transfer of a land by or among members of the Scheduled Tribes in such area;
>
> (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
>
> (c) regulate the carrying on of business as money-lenders by person who lend money to members of the Scheduled Tribes in such area."

35. It would, therefore, be clear from the narration of the Debates in the Constituent Assembly that various drafts were placed before the Constituent Assembly. Suggestions and ultimate approval of the Fifth Schedule, as extracted herebefore, would manifest the animation of the founding fathers that land in the scheduled area covering by the Fifth Schedule requires to be preserved by prohibiting transfers between tribals and non-tribals and providing for allotment of land to the members of the Scheduled Tribes in such area and regulating the carrying on of the business by money lenders in such area.

Constitutional Scheme to protect the Tribes

36. Chapter VI, Part X of the Constitution deals with "Schedule Tribes and Tribal Areas". Article 244 provides that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam, Meghalaya, Tripura and Mizoram. The provision of Clause (2) of Article 244-A are not relevant for the purpose of this case; hence omitted. The Fifth Schedule makes the provisions as to the administration and control of Scheduled Area and Scheduled Tribes. Para (1) envisages that unless the context otherwise requires, the expression "State" defined in the Schedule does not include the State of Assam, Meghalaya, Tripura and Mizoram. Part V of the Schedule gets attracted to its administration and control. Para (2) envisaged that *subject to the provisions of the Schedule,* the executive power of a State extends to the Scheduled Areas enumerated therein. Special duty has been entrusted to the Governor to report to the President of the administration of scheduled area. It enjoins that the Governor of each State, having Scheduled Areas therein, shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area. Para 5(2) provides that the Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. Without prejudice to the above general power, special power has been conferred under clause (a) to prohibit or to restrict the transfer of land by or among members of the Scheduled Tribes in such area and under clause (b) to regulate the allotment of land to members of the Scheduled Tribes in such area; under clause (c) regulates money-lending to the tribals in the Scheduled Area.

37. In the Constitution, the expression 'Scheduled Areas' has been defined to mean such area as the President may be order declare to be Scheduled Areas. Clause (2) of para 6 provides that the President may at any time by order (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (aa) increase the area of any scheduled Area in a State, after consultation with the Governor of that State; (b) alter, but only by way of rectification of boundaries, any Scheduled Area; (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area. Clause (d) deals with the rescission of any order under para 6. Such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of that paragraph shall not be varied by any subsequent order. Part D, para 7 empowers the Parliament to amend the Schedule any way of addition, variation or repeal of any of the provisions of the Fifth Schedule. Such a varied or modified Schedule shall be referred to such amended Schedule. The other details are not material for the purpose of this case. Hence they are omitted.

Scope and Sweep of the Regulation 1970.

38. As has been stated, the Regulation came into force on March 4, 1959 in Andhra area and in Telangana area with effect from December 1, 1963. The prior order in operation in Telengana area will be dealt with a little later. The material provisions relevant for the purpose are dealt with hereunder.

39. Section 2(a) defines 'Agency tracts' to mean the areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Vizianagar, Adilabad, Nizamabad, Warangal, Khammam and Mahaboobnagar declared from time to time as Scheduled areas by the President under sub-paragraph (1) of paragraph 6 of the Fifth Schedule to the Constitution. 'Scheduled Tribe' has been defined in Section 2(f) to mean any tribe or tribal community or part of or groups within any tribe or tribal community resident in the Agency tracts and specified as such by a public notification by the President under clause (1) of Article 342 of the Constitution. Section 2(g) defines 'transfer' to mean mortgage with or without possession, *lease*, sale, gift, exchange or "any other dealing" with immovable property. not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, *lease*, sale, gift, exchange or *other dealing*. The definition of transfer is a comprehensively wide definition except testamentary disposition by a tribal to another tribal so as to effectuate the prohibition of transfer of immovable property to any person other than a Scheduled Tribe or a cooperative society composed solely of members of the Scheduled Tribes.

'Section 3(1) reads as under:

> "3. Transfer of immovable property by a member of a Scheduled Tribe -
>
> (1)(a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts *by a person*. Whether or not *such person* is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a Society, Andhra Pradesh Co-operative Societies Act 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.
>
> (b) Until the contrary is proved, any immovable property situated in the Agency tracts any in the possession of a *person* who is not a member of Scheduled Tribe, shall be presumed to have been acquired by *person* or his predecessor in possession through a transfer, made to him by a member of a Scheduled Tribe.
>
> (c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of

such land by the State Government, and the Agent. Agency Divisional Officer or the prescribed officer as the case may be may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961) and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members or in such other manner and subject to such conditions as may be prescribed.

Section 2 reads as under:

2(a) Where a transfer of immovable property is made in contravention of sub-section (i), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer of his heirs.

(b) If the transferor or his heirs are not willing to take back the property or where their whereabout are not known, the Agency, the Agency Divisional Officer or prescribed officer, as the case may be may order the assignment or sale of the property to any other member of a Scheduled Tribe (or a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in the State) composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government.

Section 4 reads as under:

(4) For the purposes of this section, the expression 'transfer' includes a sale in execution of a decree and also a transfer made by a member of Scheduled Tribe in favour of any other member of a Scheduled Tribe benami for the benefit of a person who is not a member of a Scheduled Tribe; but does not include a partition or a devolution by succession."

40. Section 3, therefore, prohibits transfer of immovable property by a member of the Scheduled Tribes to a non-Scheduled Tribe. Sub-section (1)(a) envisages, with a *non obstante* clause, that notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts *by a person,* whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 and composed solely of members of the Scheduled Tribes. Clause (b) provides rule of evidence by way of presumption that until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a *non-Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe* (emphasis supplied). The burden would always be on the non-tribal to prove that the land in his possession was not acquired by transfer from a tribal; in other words, the land belongs to tribal and the non-tribal possesses it in contravention of law.

41. Clause (c) of Section 3 provides that if a non-scheduled tribe, though intending to sell, is unable to sell his land on account of either unwillingness of other tribal to purchase the land or the terms offered by him to a tribe, are inaccessible to a tribal, he may apply to the agent named or other prescribed officer who would acquire the land and take over possession of such land on payment of compensation in accordance with the principles laid down in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holding Act, 1961, as amended in 1972. Such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a Co-operative Society composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed.

42. In case of any transfer made in contravention of sub-section (1) of Section 3, the agent, the Agency Division Officer, or any other prescribed officer, may, on an application by any one interested, or on information given in writing by a public servant or *suo motu,* issue decree of ejectment against any person in possession of the property claiming under the transfer. This should be done after due notice to such person. Clause (b) of sub-section (2) of Section 3 provides that if a transferor or his heirs are not willing to take back the property or where whereabouts of the transferor are not known, the said officer may by order assign or *sell the property to another member of the Schedule Tribe* or a Co-operative Society. Sub-section 3(4) provides that for the purpose of Section 3 (4), the expression 'transfer' includes sale in execution of a decree and also a benami transfer made by a member of a Scheduled Tribes in favour of any other member of the Scheduled Tribes but does not include a partition or a devolution by succession.

43. Section 3-A makes special provision relating to mortgages without possession; the details thereof are not material. Section 4 provides for the remedy of suit to be instituted in the Agency Courts against the a *(sic)* member of the Scheduled Tribe; the details thereof are not material. Section 5 provides for attachment and sale of immovable property. Section 6 gives revisional power to the State Government. Section 6-A provides for penalties for contravention of the provisions of the Regulation. Section 7 prescribes limitation for purpose of initiating proceedings under the Regulation. Section 8 gives power to the State Government to make rules. Section 9 provides for repeal of repugnant provisions of the Madras Act 1 of 1917. Section 10 provides for saving of certain transfers and rights.

44. It is settled law that the transfer of immovable property between a member of the Scheduled Tribe to a non-scheduled Tribe in the Agency tracts is null and void. The non-tribal transferee acquires no right, title and interest in that behalf in furtherance of such sale. This Court in *Manchegowda & Ors. V/s. State of Karnataka & Ors.* [(1984) 3 SCC 301] had declared such sales to be voidable. In *Lingappa Pochanna Appelwar Vs. State of Maharashtra & Anr.* [(1985) 1 SCC 479] this Court upheld the constitutionality of similar provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

45. When the constitutionality of Section 3 of the Regulation was impugned as violative of Articles 19(1)(f) and 14 of the Constitution, this Court, in *P. Rami Reddy & Ors. vs. State of Andhra Pradesh & Ors.* [(1988) 3 SCC 433] upheld its validity holding that the Regulation aims to restore the lands to the tribals which originally belonged to them but passed into the hands of non-tribals. It would be unjust, unfair and highly unreasonable merely to freeze the situation, instead of reversing the injustice and restoring the *status quo ante.* The non-tribal economic exploiters would get no immunity and not be accorded a privileged treatment by permitting them to transfer the lands and structures, if any, raised on such land to non-tribals and to make profits at the cost of the tribals. Section 3, though it causes hardship to the non-tribals, equally, alleviates hardship of the tribals. The Court must keep in mind the larger perspective of the interest of the tribal community in its entirety; the restrictions cannot be condemned as unreasonable. The presumption embodied in Section 3(1)(b) is a rule of evidence. The non-tribals could be reasonably expected to disclose their title to the properties. The tribals due to handicaps and ignorance are unable to prove their right to land. The burden to prove title, therefore was shifted to the non-tribals. The presumption was upheld as reasonable.

46. As a part of on-going industrial advancement, large industries or projects are being set up or constructed in the scheduled areas displacing the tribals and rendering them impoverished landless labourers. When their lands are acquired for public purpose, the Government should give alternative lands for rehabilitation and easy loans for reclamation. Law relating to prohibition of alienation and restoration of lands to tribes must be simple, less cumbersome and result-oriented. The machinery must be speedy and the officers must have compassion and sense of dedication and direction to ameliorate the economic status of the tribes to assimilate them into national main-stream.

47. In Telangana area of the State of Andhra Pradesh, prior to the Regulation and pursuant to Part B State Regulation in Fifth Schedule, the AP Tribal Area Regulation, III of 1359F promulgated by Raj Pramukh of Hyderabad was in vogue. Section 46 of the Agricultural Land and Tenancy Act, 1950 prohibits transfer of agricultural land without sanction of the competent authority. Section 3 of the Tribal Area Regulation excludes the application of any Act, Regulation or Rules by a notification published in the official Gazette. Section 4 gives power to the Government to make Rules. Sub-section (2) of Section 4 prohibits eviction of tribals from the lands in their possession or occupied by them. Clause (f) *prohibits grant of patta rights over any land in notified area to a non-tribal; the agent is empowered to cancel such transfer or revise any title of land granted to a non-tribal in any notified tribal area.* Clause (g) prohibits sale in execution of a decree or whenever made, cancellation of sales not finally confirmed before coming into force of the regulation etc. As stated earlier, the Regulation was extended to Telangana region w.e.f. December 1, 1963. Prior thereto, law in Telangana area was in operation prohibiting any transfer of agricultural lands without prior permission of the officers and 1950 Regulation referred to earlier draws rebuttable presumption that all the acquisitions of immovable property situated in Scheduled Areas are acquired through a transfer from tribals. The non-tribals shall be presumed to have acquired title from tribals unless they are able to prove to the contrary that their possession of properties in the Agency tracts was lawfully acquired.

Scope of Fifth Schedule - Interplay with Regulation.

48. The predominant object of Para 5(2) of the Fifth Schedule of the Constitution and the Regulation is to impose total prohibition of transfer of immovable property to any person other than a tribal for peace and proven good management of tribal area; to protect possession, right, title and interest of the members of the Scheduled Tribes held in the land at one time by the tribals. The non-tribals, at no point of time, have any legal or valid title to immovable property in Agency tracts unless acquired with prior sanction of the Government and saved by any law made consistent with the Fifth Schedule. With the passage of time, when persons other than tribals gained unlawful title to and possession of the lands in agency tracts, their acquisition and holding of the immovable property, unless proved otherwise, have always been null and void. The Regulation, as its predecessor law, did prohibit transfer by a tribal to any other person and even benami purchaser in the name of a tribal for the benefit of a non-tribal also is null and void. Non-tribal thereon, acquires no right, title and interest in the land situated in Scheduled area. Indisputably, any transfer *inter vivos* between tribals or non-tribals or *inter se* between non-tribals except testamentary disposition to a tribal, has been totally prohibited. The only exception engrafted is the transfer to Co-operative Societies composed solely of tribals or mortgage of the land to a Co-operative Land Mortgage Bank registered as an instrumentality of the State or any Government approved lending agency to improve the agricultural lands or sale to an agent to the Government etc. A non-tribal person who is unable to find a tribal buyer is not totally prohibited to transfer it. He should offer it to the named or nominated Government agent etc. who would purchase it in the prescribed manner under the Regulation and assign it on to a tribal. The Andhra Pradesh High Court had held that the transfer of land in Scheduled Area by a tribal given to either a Scheduled Caste or a backward Class settled in Agency tracts as void.

49. In *P. Rama Reddy's case,* this Court had observed thus:

> "Within the scheduled areas of both Telangana and Andhra regions the land was entirely in occupation of different tribal communities. The area was an inaccessible tract of land covered by forests and hills. These tribal communities were in occupation of lands and lived by shifting cultivation and gathering whatever produce that was available.
>
> The non-tribals who arrived in these areas late in the 19th Century in certain areas and the early 20th Century in certain other areas found the tribals who were in occupation of these lands an easy pray for the schemes of exploitation. The non-tribals were lending money to the tribal communities and taking the land belonging to them as security though nothing was taken in writing from a tribal. The rates of interest charged ranged between 25 to 50 per cent and in certain cases even 100 per cent. The tribals who were traditionally honest and who were simple in their thought and habits fell an easy prey to the schemes of the non-tribals. It was observed by several committees that the non-tribals were able to find ways and means to circumvent the provisions of Regulation 1 of 1959 by entering into benami transactions and other clandestine transactions with unsophisticated tribals. It is absolutely necessary to create conditions for peace and maintain peace and prevent the new non-tribals from settling down in the scheduled area. If the alienations are permitted to the non-tribals there is a danger of large-scale exploitation by the new non-tribals again with the result peace will be disturbed in that area.
>
> Unless new entrants into the scheduled areas are prevented from settling down in the scheduled areas by purchasing properties either from tribals or non-tribals, it is not possible to prevent the exploitation of the unsophisticated tribals. It is only with a view to enforce the valid provisions of Regulation I of 1959, the Regulation viz., Regulation I of 1970 was made. It is in the interests of the tribals and for their protection Regulation I of 1970 was passed, because without restricting or prohibiting the alienation of lands in the possession of non-tribals to non-tribals the objectives cannot be

> achieved.
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> x x x x x x x x x x
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> True, transfer by 'non-tribals' to non-tribals' would not diminish the pool. It would maintain status quo. But is it sufficient or fair enough to freeze the exploitative deprivation of the 'tribals' and thereby legalize and perpetuate the past-wrong instead of effecting the same. As a matter of fact, it would be unjust, unfair and highly unreasonable merely to refreese the situation instead of reversing the injustice and restoring the status quo ante."

50. In this Constitutional perception and statutory operation, the crucial question that arises for consideration is: whether the transfer of its land in a scheduled area, by the Government is valid in law?

51. It is indisputable that apart from the patta lands or other lands held by the tribals, the State holds vast tracts of land in scheduled area, in some areas with rich mineral deposits. The questions are: whether the State Government is exempt from the Regulations?; whether the State Government stands above the law?; whether the meaning of the word "person" in Section 3(i)(a) of the Regulation would include the State Government? Article 244(1) read with the Fifth Schedule, Part I, while defining "State" exempts certain States as enumerated therein. It bears repetition that paragraph 5(2) of Fifth Schedule enjoins the Governor to make regulations for the peace and good governance in a Scheduled area. Without prejudice to the general power, subsequent clauses amplify particular powers. Clause (a) empowers him to prohibit or restrict the transfer of land by or among members of the tribals and non-tribals in such area. Clause (b) regulates the allotment of land *only* (added to emphasise) to members of the Scheduled Tribes in the area. The question, therefore, is: while regulating allotment of land under this clause, can the Government exclude itself from the power to allot land to a non-tribal when the object of Article 244(1) read with the Fifth Schedule is to control and maintain peace and good governance of the Scheduled area for the social and economic advancement of Scheduled Tribes? Would it be permissible to construe that the land belonging to the Government is outside such control or prohibition or restriction; whether the State Government could allot its land to non-tribals in violation of the Constitution and the law? Answer to those crucial questions bears paramount significance and impact since the object of the founding fathers of the Constitution in empowering the Governor, on the basis of his personal satisfaction, is to regulate by law the administration or control of the Scheduled area for peace and good governance of the Scheduled Tribes in the area. The question is: whether any contra interpretation would subserve the Constitutional animation or would it frustrate the constitutional objective? The Division Bench of the High Court in *Samath's case* relied upon the dictionary meaning of the word `person' and the prohibition on transfer of land *inter vivos* between natural persons of Scheduled Tribes and non-tribes in Agency tracts; it came to conclude that the Regulation does not apply to the land owned by the State Government since the State Government is not a natural person. The earlier Division Bench had taken contra view. The question, therefore, is: which of the two views subserves the constitutional purpose and is correct in law?

Meanings of the word 'Person' - whether Government is persona ficta?

52. From this perspective, the next question that arises is: whether the State Government is a person within the meaning of Section 3 of the regulation and whether its transfer of land to non-tribals or company is valid in law?

53. The word 'person' in the interplay of juristic thought is either natural or artificial. Natural persons are human beings while artificial persons are Corporations. Corporations are either Corporation aggregate or Corporation sole. In "English Law" by Kenneth Smith and Denis Keenan [Seventh Edition] at page 127, it is stated that "[L]egal personality is not restricted to human beings. In fact various bodies and associations of persons can, by forming a corporation to carry out their functions, create an organisation with a range of rights and duties not dissimilar to many of those possessed by human beings. In English law such corporations are formed either by charter, statute or registration under the Companies Acts; there is also the common law concept of the Corporation Sole". At page 163, it is further stated that "[T]he Crown is the executive head in the United Kingdom and Commonwealth, and government departments and civil servants act on behalf of the Crown". In "Salmond on Jurisdiction" by P.D. Fitzerald [Twelfth Edition,], at page 66, it is stated that "[A] legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination....". At page 72, it is further amplified that "[T]he King himself, however, is in law no mere mortal man. He has a double capacity, being not only a natural person, but a body politic, that is to say, a corporation sole. The visible wearer of the crown is merely the living representative and agent for the time being of this invisible and underlying persona ficta, in whom by law the powers and prerogatives of the government of this realm are vested". In "Jurisprudence" by R.W.M. Dias [Fifth Edition], at page 265, it is stated that ".... the value of personifying group activities is further reduced by the fact that courts have evolved ways of dealing with such activities without resorting to the device of persona".

54. In *Madras Electric Corporation v. Boarland* [(1955) 1 All ER 753], relied upon by Shri Dhawan, it has been held that the word 'person' in its ordinary and natural sense includes Crown. The same view was reiterated in *I.R. Commissioner v. Whiteworth Coal Co. Ltd.* [(1968) 2 All ER 91 at 108]. On the concept of "legal personality" and the concept of "person", in "Elementary Principles of Jurisprudence" by Keeton [1949 Edition] relied on by Shri Rajeev Dhawan, in Chapter XIII at page 150, it is stated that in modern law, this personification by law is confined to certain definite limits, although this restriction is based, not upon principle, but upon convenience. In law, however, we are concerned with legal persons, whether they are natural, i.e., human beings capable of sustaining rights and duties, or artificial or juristic, i.e., groups or things to which the law attributes the capacity to bear rights and duties. Legal personality is itself nothing but a fiction, in so far as it is intended to imply no more than that a legal person is simply a complex of legal rights and duties. At page 151, it is stated that juristic persons may be defined as those persons or groups of persons which the law deems capable of holding rights and duties, with a few exceptions. At page 152, he has amplified that corporation sole is a juristic person and it succinctly describes the position in modern English Law. The conception of separate personality attaching to the successive occupants of a particular office is as valid juristically as the conception of incorporation of the members of a group. The Law of Property Act, 1925, Section 180 contents itself with addition briefly, that a corporation sole may now hold personal property with rights and duties. At page 154, it is stated that principles applying to corporation aggregate are not fully applicable to corporation sole. "Court regarded the corporation sole not as a person, but as a device for the transmission of rights from one natural person to another". He quotes Blackstone: that "Corporation sole consists of one person only and his successor, in some particular station who are incorporated by law, in order to give them legal capacities and advantages, in particular that of perpetuity, which in the natural persons could not have had. In this sense the King is a corporation sole". At page 155, it is further stated that the law, therefore, has wisely ordained, that the person, *qua tenus* person, shall never die, any more than the King; by making him and his successors a corporation sole. By which means all the original rights of a personage are preserved entirely to the successors. At page 169, it is stated that the reason for King personality, a corporate sole, is that corporate personality is a technical device, applied for a multitude of very divers aggregations, institutions and transactions, whereas each of many theories has been conceived for a particular type of juristic personality. None of them foresaw the extent to which the device of incorporation would be used in modern business, or we may add, to cloak the activities of some branch of Government.

55. Thus, in Great Britain, Crown has been regarded as a Corporation sole, *persona ficta* so that it has never been considered necessary to personify the State. The Crown in its political capacity represents the State in England and can sue in the English courts as a person. In *Madras Electric Corporation case,* the same view was reiterated but when liability was sought to be imposed upon a person, it was held that the general principle of person, does not include the Crown, unless the statute is binding on the Crown, by express provision or by necessary implication. As held in *I.R. Commissioner v. Whiteworth Coal Co. Ltd.* [(1968) 2 All ER 91 at 108] in a taxing statute it was held that there was no objection to interpret the word 'person' to include the Crown in any provision other than those which seek to impose a burden.

56. In the American Jurisprudence 2nd Series, Vol. 72, page 407, it is stated that a State, in the ordinary sense of the Federal Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organised under a government sanctioned and limited by a written constitution, and established by the consent of the governed. While the municipal corporation is organised under the authority of a state legislature and draws its public character from the law of the state creating it, it is endowed with a public character by virtue of having been invested by the legislature with subordinate legislative powers to administer local and internal affairs of the community, as well as by having been created as a branch of the state government to assist it in the civil government of the state. A public corporation, with capacity to sue and be sued, under modern statutory provisions, is a legal person. So also, for purposes of convenience, certain Departments of Government or the board of managers of a public institution are sometimes incorporated, but the corporations thus created, although public, are not municipal corporations. In Black's Law Dictionary, Sixth Edition, Page 675, the word "Government" has been defined thus:

> "From the Latin gubernaculum, signifies the instrument, the helm, whereby the ship to which the state was compared, was guided on its course by the "gubernator" or helmsman, and in that view, the government is but an agency of the state, distinguished as it must be in accurate thought from its scheme and machinery of government.
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> In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the

> federal government and all its agencies and bureaus, state and county governments, and city and township governments.
>
> The system of polity in a state, that form of fundamental rules and principles by which a nation or state is governed, or by which individual members of a body politic are to regulate their social actions. A constitution, either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined, as a monarchical government, a republican government, etc. The sovereign or supreme power in a state or nation. The machinery by which the sovereign power in a state expresses its will and exercise its functions, or the framework of political institutions, departments, and offices, by means of which the executive, judicial, legislative, and administrative business of the state is carried on."

57. In *Edgar B. Sims. v. United States of America* [359 US 108 : 3 L ed 2d 66], Federal tax authorities issued notices of levy of tax for assessment on unpaid income of employees of the State of West Virginia, and had the notice served on the defendant. The State auditor, seized the accrued salaries of the taxpayers pursuant to Sections 6331 of the Internal Revenue Code of 1954. The defendant-State refused to honour the levy and instead, delivered payroll warrants to the taxpayers for their, then accrued salaries. Thereafter, the Government brought the action in the District Court for the Southern District of West Virginia to recover from defendant the amount of salaries he had so paid to the taxpayer in disobedience to the Government's levies. The District Court upheld the Government's order. The Court of Appeals, on appeal, affirmed it. On a writ of certiorari, it was held by the Supreme Court of USA that the levy of tax made under Section 6331 was authorised levy and that defendant under Section 6332 of the Internal Revenue Code of 1954 as 'person' was liable to pay the same.

58. In *State of Ohio v. Guy T. Helvering* [292 US 360: 78 L ed 1307 at 1310] the question was whether "the State", when it was selling liquor through its agency and sources, "was a person" within the meaning of USC title 26, Section 205 [Section 3244, as amended]? It was held at page 1310 that the tax is levied upon every person who sells liquor etc. The word `person' as used in the title, should be broadly construed as to mean and include a partnership, association, company or corporation, as well as a natural person. Whether the word `person' or `corporation' includes a State or the United States depends upon the connection in which the words is found. In *South Carolina case,* the United States Court disposed of the question by holding that since the State was not exempt from the tax, the statute reached the individual sellers who acted as dispensers for the State. While not rejecting that view, the Court preferred to place on the word `person' the broader ground that when the State itself becomes a dealer in intoxicating liquors, it falls within the reach of the tax either as a `person' under the statutory extension of that word to include a corporation, or as a `person' without regard to such extension.

59. In *State of Georgia v. Hiram W. Evans* [316 US 159 : 86 L ed 1346] the same view was reiterated by the U.S.A. Supreme Court and it was held that if the word 'person' is to include a State as plaintiff, it must equally include a State as a defendant or else the language used would be meaningless.

60. In *United States of America v. Cooper Corporation et al.* [312 US 600 : 85 L ed 1071] relied on by Sri Sudhir Chandra, considering the word 'person' used in Sections 7, 85 and 178 of the Sherman Anti

Trust Act, it was held that although the term "person", as used in a state, is not ordinarily construed to include the sovereign, this is not a hard and fast rule of exclusion, but may be negatived by resort to aids to construction indicating a contrary intent. On the facts, it was held that State was not a person. In that context it was held that in the absence of any indication to the contrary, the term 'person', when used in different sections of a statute, was employed throughout the state, in the same, and not different sense. But the said decision was reversed in *State of Georgia case.* In *United States v. I.C.C.* [(1949) 337 U.S. 426] it was held that when relief is sought against State itself, the word 'person' would include the State and be construed accordingly.

61. In *Superintendent & Legal Remembrancer, State of West Bengal v. Corporation of Calcutta* [(1967) 2 SCR 170] a Bench of nine Judges of this Court was to consider whether the State of West Bengal, when it was carrying on trade, as owner and occupier of the market at Calcutta, without obtaining the licence, was bound by the Calcutta Municipality Act or, by necessary implication, was exempted to obtain licence. A complaint against the State, for its failure to obtain licence was filed by the Municipal Corporation. It was contended that the State is not a person under Section 218 of the said Act. Per majority, it was held that the Common Law rule of construction that the Crown is not, unless expressly named or clearly intended, bound to be a State, was held to be not acceptable as a rule of construction. It was held that the archaic rule based on prerogative and protection of the Crown has no relevance to a democratic republic. It is inconsistent with the rule of law based on the doctrine of equality and introduces conflicts and anomalies. The normal construction, viz., that an enactment applies to citizens as well as to the State, unless it expressly or by necessary implication exempts the State from its operation, steers clear of all the anomalies and is consistent with the philosophy of equality enshrined in the Constitution. Under the Act there is a distinction between fine imposed under Section 537 and under Section 541 of the Act, the fines under Section 537 are in respect of offences enumerated therein they certainly go to the coffers of the States. In respect of such offences it may be contended that, as the fines paid reach the State itself, there is an implication that the State was not bound by the Sections enumerated therein, for a person who receives the fine, cannot be the same person who pays it. This incongruity may lead to the said necessary implication. Another Bench of nine Judges in *State Trading Corporation of India Ltd. v. The Commercial Tax Officer & Ors.* [AIR 1963 SC 1811 at 1817] per majority interpreted the word 'citizen' in a broader perspective. In *Union of India v. Jubbi* [AIR 1968 SC 360 at 362] a three-Judge Bench had held that a statute applies to State as such it does to a citizen, unless, it expressly or by necessary implication, exempts the State from its operations. If the Legislature intended to exclude the applicability of the Act to the State, it could have easily stated in Section 11 itself or by a separate provision that the Act was not to be applied to the Union or to the lands held by it. In the absence of such provision, in a constitutional set up like the one we have in this country, and of which the overriding basis is the broad concept of equality, free from any arbitrary discrimination, the presumption would be that a law of which the avowed object is to free the tenant of landlordism and to ensure to him security of tenure would bind all landlords irrespective of whether such a landlord is an ordinary individual or the Union. In that case, it was contended that Abolition of Big Landed Estates and Land Reforms Act, 1953 and Section 11 thereof does not apply to the land held by the Government. This Court rejected that contention. It would, therefore, be settled law that the question whether or not the word 'person' used in a statute would include the State has to be determined with reference to the provisions of the Act, the aim and its object and the purpose the Act seeks to subserve. There is no reason to consider the word 'person' in a narrow sense. It must be construed in a broader perspectivity, unless the statute, either expressly or by necessary implication, exempts the State from the operation of the Act as against the State and would include "State Government".

Property of the State - how dealt with under the Constitution.

62. Part I of the Constitution of India deals with Union and its territories. Article 1 declares that India, that is Bharat, shall be a Union of States. The States and the territories thereof have been specified in the First Schedule to the Constitution. The territory of India shall comprise of - (a) the territory of States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired. Articles 2 to 4 deal with the power of the Parliament to admit into the Union, by law, any State, or establish new States on such terms and conditions as it thinks fit. Formation of the new States and alteration of areas, boundaries and names of the existing Sates are regulated by law made by Parliament. It also gives power to the Parliament to amend the First and the Fourth Schedules and the provide for supplemental, incidental and consequential matters. The First Schedule enumerates the States and the first in the alphabetical order is Andhra Pradesh with territories specified thereunder.

63. Under Part VI of the Constitution titled "The States", Article 152 defines "State". For the interpretation of the Constitution, by operation of Article 367, unless the context otherwise requires or modifies, the General Clauses Act shall apply. Section 3(23) thereof defines Government to include both the Central Government and State Government. Section 3(8) defines "Central Government" and Section 3(60) defines "State Government" as regards anything *done* and or to be done, shall mean the Governor. The Governor or each State is its Executive Head and the executive power of the State shall be exercised by the Governor either directly or through officers subordinate to him in accordance with the Constitution as envisaged under Article 154. The executive power of the State, subject to the provisions of the Constitution, by operation of Section 162, shall extend to the matters with respect to which the Legislature of the State has power to make laws. The provision thereto is not relevant for the purpose of this case.

64. The executive power, therefore, of the Sate is co-extensive with that of the legislative power of the State. The Governor shall appoint the Chief Minister and on his advise, he appoints the Council of Ministers, who shall aid and advise the Governor in the exercise of his function except, in so far as he is, by or under the Constitution, required to exercise his functions or any of them, in his discretion. The Council of Ministers, headed by the Chief Minister, shall be collectively and individually responsible to the Legislature and the people in the matter of the governance of the State. All executive actions of the Government of a State, shall be expressed to be taken in the name of the Governor and the business of the Government is conducted in accordance with Article 166 and the Business Rules made, by the Governor, by clause (3) thereof.

65. Under Chapter III of Part XII, Article 294 vests in the union and the corresponding State all property and assets which immediately before the commencement of the Constitution were vested in His Majesty for the purposes of the Government of Dominion of India or of each Governor's Province, whether arising out of any contract or otherwise; similarly all rights, liabilities and obligations, respectively of the Government of the Dominion of India and of the Government of each corresponding State, shall belong to the Government of India and the Government of each corresponding State. Article 295 provides for succession to the property, assets, rights, liabilities and obligations in other cases. Article 298 provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business, and to the acquisition, holding and *disposal of property and the making of contracts for any purpose* co-extensive with legislative power. The Union of India and each State under Article 300 may sue or be sued, with all rights and liabilities as a constituent power of the State under the Constitution. Article 299 empowers Union of India and the Government of each State to enter into contract, in the exercise of the executive power, to be expressed in the name of the President or the Governor, as the case may be. All assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor, by such persons and in such manner as he may direct or otherwise. However, the President or the Governor shall not be personally liable therefor. Article 300 is of material importance. As stated earlier, the Government of India or a State may sue or be sued, by the name of the State and subject to the provisions of the Constitution and the law enacted and by virtue of the power conferred by the Constitution, it can sue and be sued in relation to their respective affairs in the like cases.

66. The members of the Legislature are elected by the people periodically at the end of every five years. The political party or group of political parties who secure majority in the Legislative Assembly of the State elects the leader who would be called upon by the Governor to form the Government and on his appointment as the Chief Minister. On his advise, the Governor appoints his Council of Ministers who act in collective responsibility to aid and advice the Governor in the governance of the State during the tenure of their office.

Permanent bureaucracy acts as an arm of the Government.

67. Articles 309 to 312A in Chapter I of Part XIV under the heading "Services under the Union and the States" regulate the recruitment and conditions of service and appointments to the public services and posts in connection with the affairs of the Union or the States, subject to the provisions of the Constitution and acts of the appropriate Legislature. Details thereof are not material for the purpose of this case; suffice it to state that Constitution has created permanent bureaucracy consisting of diverse all India services allotted to various States and State Services created thereunder, to assist the political executive and to implement the provisions of the Constitution, the laws and the executive policy of the appropriate Government. Under the Constitution, in all ordinary matters of administration, the Ministers take full responsibility, subject to the control by the Legislature. The bureaucracy gives shape to the decisions taken by the Council of Ministers at the Cabinet meeting or by the individual Ministers by working out the details and they are applied in the given set of facts. In Halsbury's Laws of England [4th Edn.] Vol. 8 in paragraph 1152 at page 711 it is stated that the Government offices and departments through which the general executive administration of the country is carried on owe their establishment and organisation, together with the powers they possess and duties they perform, partly to the royal prerogative and partly to the Parliament. They derive almost all their powers directly or indirectly from Parliament, which alone can provide them with the supplies of money, necessary for their operations. The internal arrangements, on the other hand, are hardly ever organised or directly interfered with by Parliament, but have been a matter for the royal prerogative. This principle *proprio vigore* applies to Cabinet form of functioning under our Constitution. In paragraphs 1155 at page 713, it is further stated that where functions entrusted to a minister or to a department are performed by an official employed in the ministry or department, there is in law no delegation because constitutionally the acts or decisions of the officials are that of the minister. In the exercise of their functions relating to land under any enactment, every minister and government department must have regard to the desirability of conserving the natural beauty and amenity of the countryside.

Ministerial Responsibility.

68. As stated hereinbefore, the Constitution envisions to establish an egalitarian social order rendering to every citizen, social, economic and political justice in a social and economic democracy of the Bharat Republic. Article 261 [1] of the Constitution provides that full faith and credit shall be given, throughout the territory of India, to public acts, record and judicial decisions of the Union and of every State. In *Secretary, Jaipur Development Authority v. Daulat Mal Jain* [(1997) 1 SCC 35], a Bench of this Court had held thus:

> "The Governor runs the Executive Government of a State with the aid and advice of the Chief Minister and the Council of Ministers which exercise the powers and performs its duties by the individual Ministers as public officers with the assistance of the bureaucracy working in various Departments and Corporate sectors etc. Though they are expressed in the name of the Governor. each Minister is personally and collectively responsible for the actions, acts and policies. They are accountable and answerable to the people. Their powers and duties are regulated by the law and the rules. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department. Therefore, they are indictable for their conduct or omission, or misconduct or misappropriation. The Council of Ministers are jointly and severally responsible to the Legislature. He/they is/are also publicly accountable for the acts or conducts in the performance of duties.
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> The, Minister holds public office though he gets constitutional status and performs functions under constitution, law or executive policy. The acts done and duties performed are public acts or duties as holder of the public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the concerned authority by the Constitution by virtue of appointment. The holder of the office, therefore gets opportunity to abuse or misuse of the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of directions, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. The executive Government should frame its policies to maintain the social order, stability, progress and morality. All actions of the Government are performed through/by individual persons in collective or joint or individual

capacity. Therefore, they should morally be responsible for their actions.

When a Government in office misuses its powers, figuratively, we refer to the individual Minister/Council of Ministers who are constituents of the Government. The Government acts through its bureaucracts, who shapes its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government. The actions are intended to further the goals set down in the Constitution, the laws or administrative policy. The action would, therefore, bear necessary integral connection between the 'purpose' and the end object of public welfare and not personal gain. The action cannot be divorced from that of the individual actor. The end is something aimed at and only individuals can have and shape the aims to further the social, economic and political goals. The ministerial responsibility thereat comes into consideration. The Minister is responsible not only for his actions but also for the job of the bureaucrats who work or have worked under him. He owes the responsibility to the electors for all his actions taken in the name of the Governor in relation to the Department of which he is the head.

69. In *Shemsher Singh vs. State of Punjab & Anr.* [(1974) 2 SCC 831], a Bench of seven Judges of this Court had held that under the Cabinet System of Government as embodied in our Constitution, the Governor is the formal head of the State. He exercises all his powers and functions conferred on him by or under the Constitution, on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his function in his discretion. The satisfaction of the Governor for the exercise of any power or function, required by the Constitution, is not the personal satisfaction of the Governor but is the satisfaction in the constitutional sense under the Cabinet System of Government. The executive is to act subject to the control of the legislature. The executive power of the State is vested in the Governor as head of the Executive. The real executive power is vested in the Ministers of the Cabinet. The Chief Minister and the Council of Ministers with the Chief Minister as its head aid and advise the Governor in the exercise of his executive functions. The same principle was reiterated by a Bench of three Judges in *R.K. Jain vs. Union of India* [(1995) 4 SCC 119]. Therein, it was held that in a democracy governed by rule of law, State is treated on par with a person by Article 19(6) in commercial/industrial activities.

70. It would thus be clear that in a democratic polity governed by the rule of law, the administration is run through constitutional mechanism i.e., Cabinet form of Govt. by a Council of Ministers headed by the Chief Minister. They aid and advise the Governor, the executive head of the State. The bureaucracy - an arm of the political executive - assists as an integral part of administrative mechanism. Their actions or the acts, individually or collectively, are directed to elongate and fulfil the socio-economic goals set down in the Constitution to establish the egalitarian social order in which socio-economic justice is secured to the poor and weaker sections of the society including the Scheduled Castes and Scheduled Tribes, in particular, as enjoined in Article 46 of the Constitution, to promote their socio-economic interest and protect them from social injustice and all forms of exploitation. The State is, therefore, a "person" within the constitutional mechanism *persona ficta* is enjoined to elongate the objects of the Constitution.

Scope of the power of the Govt. in disposal of its property in Scheduled area and constitutional duty and limitation of the State.

71. In "in the Framing of the India's Constitution", a study by B. Shiva Rao, (Volume II) in Chapter 20 on the Fifth Schedule of the Constitution on the Tribal Area, the author has surveyed the historical background for integration of Scheduled Tribes into the national mainstream. The historical survey and legislative development do assure us that throughout... A system of modified exclusion of law was applied to the Scheduled areas. The power was with the Governor. He exercises the executive and legislative power to apply, or to refrain from applying any law made by Parliament or State Legislature to the Agency tracts. The object of Government policy is to protect the tribals or their land.... by securing to them protection from exploitation. The principal duty of the administration is to protect them from exploitation. Considering the past experience and the exploitation of the tribals' simplicitly and truthfulness by the non-tribals, it became imperative by statutory safeguards to preserve the land which is their natural endowment and mainstay for their economic empowerment. No laws affecting social matters, occupation of land including tenancy laws allotment of land and setting apart of land for village purposes and village management, including the establishment of village panchayats, would apply, unless they are suitable to the conditions. Shiva Rao has stated at page 579 thus:

> "The transfer of land in a Scheduled Area from a tribal to a non-tribal was forbidden; and the State Government was also prohibited from allotting State land in a Scheduled Area to non-tribals except in accordance with rules made after consulting the Tribes Advisory Council. Likewise, if advised by the council, the Governor was obliged to license money-lending, prescribing such conditions as were considered necessary; and the breach of these conditions would be an offence. In order that public attention must be focussed on the development work carried out in these areas, the State Government was required to show separately in its annual financial statement the revenues and expenditure pertaining to these areas."

72. Thus, the Fifth and Sixth Schedules an integral scheme of the Constitution with direction, philosophy and anxiety is to protect the tribals from exploitation and to preserve valuable endowment of their land for their economic empowerment to elongate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political Bharat.

Egalitarian Social Order - Scope and Content.

73. Justice is an attribute of human conduct. Law, as a social engineering, is to remedy existing imbalances, as a vehicle to establish an egalitarian social order in a Socialist Secular Bharat Republic. The Upanished says that, "let all be happy and healthy, let all be blessed with happiness and let none be unhappy". Bhagwatgeeta preaches through Yudhishtra that, "I do not long for kingdom, heaven or rebirth, but I wish to alleviate the sufferings of the unfortunate". Prof. Friedlander in his "Introduction of Social Welfare" at page 6 states that social welfare is the organised system of social service and institutions are designed to aid individuals and groups to attain specified standard of life and health and personal and social relationship which permit them to develop their full capacities and to promote their well-being in harmony with the needs of their families and the community. Welfare

State is a rubicon between unbridled individualism and communism. All human rights are derived from the dignity of the person and his inherent worth. Fundamental Rights and Directive Principles of the Constitution have fused in them as fundamental human rights as indivisible and inter-dependent. The Constitution has charged the State to provide facilities and opportunities among the people and groups of people to remove social and economic inequality and to improve equality of status. Article 39(b) enjoins the State to direct its policy towards securing distribution of the ownership and control of the material resources of the community as best to subserve the common good. The founding fathers with hind sight, engrafted with prognosis, not only inalienable human rights as part of the Constitution but also charged the State as its policy to remove obstacles, disabilities and inequalities for human development and positive actions to provide opportunities and facilities to develop human dignity and equality of status and of opportunity for social and economic democracy. Economic and social equality is a facet of liberty without which meaningful life would be hollow and mirage.

Right to development - a fundamental right.

74. Declaration of "Right to Development Convention" adopted by the United Nations and ratified by India, by Article 1 *"right to development"* became part of *an inalienable human right. By virtue thereof, every human person and all people are entitled to participate in, ·contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms would be fully realised* (emphasis supplied). Clause (2) thereof provides that "the human right to development also implies the full realisation of the right of the people to improve their natural wealth and resources". Article 2(1) provides that "the human person is the central subject of development and should be the active participant and beneficiary of the right to development". Clause (2) says that all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure free and complete fulfilment of the human being and they should, therefore, promote and protect an appropriate political, social and economic order for development". Clause (3) thereof provides that the States have "the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom".

75. Article 3 (1) recognises and enjoins that it is the State's primary responsibility to create conditions favourable to the realisation of the right to development. Under clause (3) thereof, it reminds the State of its duty to cooperate with each other and of "ensuring development and eliminating obstacles to development". Article 6(2) reassures that "human rights and fundamental freedoms are indivisible and interdependent; equal attention and *urgent consideration should be given to the implementation. promotion and protection of civil, political, economic, social and cultural rights* (emphasis supplied) and clause (3) thereof enjoins that "the States should take steps to eliminate obstacles to development. Article 8 enjoins that "the State should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure *inter alia* equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income". It also provides that *"an appropriate economic and social reform should be carried out with a view to eradicating all social injustice"*. Article 9 gives a right declaring that "all the aspects of the right to development set forth in the present declaration are *indivisible and interdependent and each of them should be considered in the context of the whole"* and Article 10 concludes and reminds the State of its duty "to take steps to ensure them the *full exercise and progressive enhancement of the right to development,* including the formulation, adoption and implementation of policy, legislative and other measures at the national levels". The directive principles in Part IV of the Constitution are fore-runners to the Convention (Emphasis supplied).

76. India being an active participant in the successful declaration of the Convention on Right to Development and a party signatory thereto, it is its duty to formulate its policies, legislative or executive, accord equal attention to the promotion of, and to protect the right to social, economic, civil and cultural rights of the people, in particular, the poor, the Dalits and Tribes as enjoined in Article 46 read with Articles 38, 39 and all other related Articles read with right to life guaranteed by Article 21 of the Constitution of India. By that constant, endeavour and interaction, right to life would become meaningful so as to realise its full potentiality of "persons" as inalienable human right and to raise the standard of living, improve excellence and to live with dignity of person and of equal status with social and economic justice, liberty, equality and fraternity, the trinity are pillars to establish the egalitarian social order in Socialist Secular Democratic Bharat Republic.

77. Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian policy. Law as a social engineering is to create just social order removing inequalities in social and economic life, socio-economic disabilities with which poor people are languishing by providing positive opportunities and facilities to individuals and groups of people. Dr. B.R. Ambedkar, in his closing speech in the Constituent Assembly on November 25, 1949, had lucidly elucidated thus:

> "What does social democracy mean? It means way of life which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty, would kill individual initiative - we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty". We cannot afford to have equality in political life and inequality in economic life. How long shall we continue to live this life of contradiction? How low shall we continue to deny equality in our social and economic life? We must remove this contradiction at the earliest possible moment or else those who suffered from inequality will blow up the structure of political democracy which this Assembly has laboriously built up."

(Vide B. Shiva Rao's, 'The Framing of India's Constitution: Select Document', Vol. IV, p. 944.)

78. The core constitutional objective of "social and economic democracy" in other words, just social order, cannot be established without removing the inequalities in income and making endeavour to eliminate inequalities in status through the rule of law. The mandate for social and economic retransformation requires that the material resources or their ownership and control should be so distributed as to subserve the common good. A new social order, thereby, would emerge, out of the old unequal or hierarchical social order. The legislative or executive measures, therefore, should be necessary for the reconstruction of the unequal social order by corrective and distributive justice through the rule of law.

Right to life - Scope and Content.

79. Article 21 of the Constitution reinforces "right to life" - a fundamental right - which is an inalienable human right declared by the Universal Declaration on Human Rights and the sequential Conventions to which India is a signatory. In *Delhi Transport Corporation vs. D.T.C. Mazdoor Congress* [AIR 1991 SC 101 at 173] in paragraph 223, this Court had held that right to life would include right to continue in permanent employment which is not a bounty of the employer nor can its survival be at the volition of mercy of the employer. Income is the foundation to enjoy many fundamental rights and when work is the source of income, the right to work would become as much a fundamental right. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain application. That will be a mockery of them. In *Bandhua Mukti Morcha vs. Union of India* [(1984) 3 SCC 161 at 183-84], this Court had held that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the children to develop in a healthy manner and in conditions of freedom and dignity. Adequate facilities, just and human conditions of work etc. are the minimum requirements which must exist in order to enable a person to live with human dignity and the State has to take every action. In *Subhash Kumar vs. State of Bihar* [AIR 1991 SC 420], this Court had held that the right to life includes the right to enjoyment of pollution free water and air for full enjoyment of life. In *Olga Tellis v. Bombay Municipal Corporation* [AIR 1986 SC 180], this Court had held that right to livelihood is an important facet of the right to life. In *C.E.S.C. Ltd. & Ors. v. S.C. Bose & Ors.* [1992 (1) SCC 441 at 462-63, para 30], it was held that right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. Therefore, right to life enshrined in Article 21 means something more than mere survival of animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment - social, cultural and intellectual - without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21. Right to health and social justice was held to be fundamental right to workers in *Consumer Education and Research Centre vs. Union of India* [(1995) 3 SCC 42] and *Life Insurance Corporation vs. Consumer Education and Research Centre* [(1995) 5 SCC 482]. Right to economic equality is held to be fundamental right in *Dalmia Cement Bharat Ltd. & Anr. etc. vs. Union of India & Ors. etc.* (JT 1996 (4) SC 555). Right to shelter is held to be a fundamental human right tin *P.G. Gupta vs.*

State of Gujarat & Ors. [1995 Supp. (2) SCC 182], *M/s. Shantilal Builders vs. Narayan Khimlal Totame & Ors.* [(1990) 1 SCC 520], *Chameli Singh & Ors. vs. State of U.P. And Anr.* [(1996) 2 SCC 549] and *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors.* [JT 1996 (10) SC 485]. The tribals, therefore, have fundamental right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered to them through the States regulated power of good Government that the lands in Scheduled areas are preserved for social economic empowerment of the tribals.

Meaning of Socialist Democratic Republic.

80. It is necessary to consider at this juncture the meaning of the word "socialism" envisaged in the Preamble of the Constitution. Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. The Fundamental Rights and the Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word "socialist" used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate Articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice enjoins the Court to uphold government's endeavour to remove economic inequalities, to provide decent standard of living to the poor and to protect the interest of the weaker sections of the society so as to assimilate all the sections of the society in a secular integrated socialist Bharat with dignity of person and equality of status to all.

81. Shri P.A. Choudhary, learned senior counsel for the 13th respondent, contended that the word 'person' in Section 3 (1) of the Regulation does not cover the executive Government of the State nor does it prohibit the Government from transferring its land. According to him, such an interpretation would get the Regulation exposed itself to be *ultra vires* of Article 298 of the Constitution which should be avoided. The premise of his contention is founded on the principle that the Constitution empowers the Executive to acquire, hold and dispose of the property and the Governor, as sovereign head of the Executive, gets no power under the Fifth Schedule to prohibit the State Government to transfer its property to non-tribals. On the other hand, the Constitution has full faith in the Executive to implement the directives contained in the Fifth Schedule to the Constitution to promote the welfare of the Tribes. The Constitution has built up a balanced structure distributing powers and functions to each of the three branches of the State. The Fifth Schedule read with Article 244 of Chapter X of the Constitution, with a *non obstante* clause, has conferred only the legislative power on the Governor, referable to Article 245 to enact the law relating to scheduled areas. The power to acquire, hold and dispose of the property of the State was wisely left untouched in that behalf. The prohibition contained in Fifth Schedule, therefore, does not effect the power of the State under Article 298 to dispose of its property situated in Scheduled area in the manner it deems appropriate. To buttress his contention, the learned counsel cited a passage from Walter Bagehot - The English Constitution at page 283 that the Queen, without consulting the Parliament, can by law disband the Army, engage or dismiss the officers from General Commanding-in-Chief downwards. She could sell all her war ships and all novel stores etc. He also cited "Governmental Law" by Hartley and Griffith, page 289 in that behalf. He further cited Lord Birkeenhead's dictum in *Birkdale District Electric Supply Company Ltd. V/s. Corporation of Southport* [1926 AC 355 at 364] wherein it was held that power entrusted to a person or public body by the Legislature was to effectuate public purpose. They cannot divest themselves of those powers and duties. Nor can they do any action incompatible with due exercise of their powers or the discharge of their duties.

82. In *Rederiaktiebolaget Amphitrite V/s. The King* [(1921) 3 KB 500] cited by the learned counsel, the Government had given an undertaking to the owners and permitted the neutal warship to carry a particular class of cargo to a British colony in which event the said ships will be released from detention. On the faith of it the owners of the ships carried the cargo and requested for their release from detention. When clearance was refused, action was laid in the court for damage for breach of contract. It was held that such an undertaking by the Government was not enforceable in a Court of law, as it was not being within the competence of the Crown to make a contract which would have the effect of limiting its power of executive action in the future.

83. He also cited *Youngstown Sheet & Tube Company et al. V/s. Charles Sawyer* [343 US 579 at 632 : 96 L ed 1153 at 1198] for the proposition that the President has executive inherent power to seize private property to meet an emergency subject to the legislation confronting him of the power. He also cited *Lois P. Myers Vs. United States* [272 US 160 : 71 L ed 11] wherein it was held that the President has the executive power to appoint and remove executive subordinates.

84. In *The State of Uttar Pradesh & Ors. V/s. Babu Ram Upadhya* [(1961) 2 SCR 679] cited by Shri Choudhary, it was held that the pleasure doctrine of the President under Article 310 of the Constitution is qualified by Article 311 and is not subject to any law made by the Parliament or the Legislature of the State. In other words, according to the learned counsel, the ratio therein reiterates that the executive power of the President/ Governor granted under the Constitution is not subject to any limitations but is co-extensive with the exercise of the legislative power.

85. *Maru Ram etc. etc. V/s. Union of India & Anr.* [(1981) 1 SCR 1196] was cited for the proposition that the power, of the President under Article 72 and of the Governor under Article 162, are not subject to legislative control. The power of Legislature imposing minimum sentence of imprisonment under Section 433A of the Code of Criminal Procedure is not subject to, nor can nullify wholly or partly, the executive power of the President or the Governor to pardon or to reduce the life imprisonment of a convict.

86. It is true, as contended by Shri Chowdhary, that the Constitution has demarcated legislative, executive and judicial powers and entrusted them to the three wings of the State; in particular the President/ Governor of the State is to exercise the executive power in their individual discretion. It is not subject to legislative limitations to be done in accordance with rules of business. In particular, the President/Governor is entrusted with the executive power co-extensive with the legislative power enumerated in the Seventh Schedule read with Article 245 of the Constitution. The executive power especially conferred by the Constitution like the pleasure tenure or the power of pardoning a convict are in our view, not apposite to the issue. The power of the executive Government in that behalf has wisely been devised in the Constitution is not subject to any restriction except in accordance with the Constitution and the law made under Article 245 read with the relevant Entry in the Seventh Schedule to the Constitution is subject to Fifth Schedule when it is applied to Scheduled area. The power of the Government to acquire, hold and dispose of the property and the making of contracts for any purpose conferred by Article 298 of the Constitution equally is co-extensive with the legislative power of the Union/State. However, Article 244 (1) itself specifies that provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State except the excluded areas specified therein. The legislative power in Clause (1) of Article 245 equally is *"subject to the provisions of the Constitution"* i.e. fifth Schedule. Clause (1) of para 5 of Part B of the Fifth Schedule applicable to Scheduled areas, adumbrates with a *non obstante* clause that "Notwithstanding anything in the Constitution, in other words, despite the power, under Article 298, the Governor may, by public notification, direct that any particular Act of Parliament or of the Legislature of a State *shall not apply to a Scheduled Area or any part thereof* in the State or shall apply to a Scheduled Area or any part thereof in the State, subject to such exceptions and modifications as he may specify in the notification and any direction given under clause (1) of para 5, may be given so as to have retrospective effect". The executive power of the State is, therefore, subject to the legislative power under clause 5(1) of the Fifth Schedule. Similarly sub-para (2) thereof empowers the Governor to make regulation for the peace and good government of any area in a State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such regulation may regulate the allotment of land to members of the Scheduled Tribes in such area or may prohibit or restrict the transfer of land under clause (a) by or among the members of the Scheduled Tribes in such areas. In other words sub-para 5(2) combines both legislative as well as executive power, clause 5(2)(a) and (c) legislative power and clause (b) combines both legislative as well as executive power. The word `regulation' in para 5(2)(b) is thus of wide import.

Meaning of the word 'Regulation' in the title of the Regulation, para 5(2)(b) of the Fifth Schedule of the Constitution.

87. The question then is: whether the word "regulate" in para 5 clause (2)(b) would include prohibition to transfer the Government land? it requires no elaborate discussion in this behalf. While interpreting Article 19(1)(g) of the Constitution, this Court has consistently being *(sic)* held that the term `regulation' would include total prohibition vide *Narendra Kumar vs. Union of India* [(1960) 2 SCR 372] *Fatehchand Himmatlal v. State of Maharashtra* [(1977) 2 SCC 670; *State of U.P. & Ors. v. Hindustan Aluminium Corpn. and Ors.* [(1979) 3 SCC 229]; *K. Ramanathan v. State of Tamil Nadu & Anr.* [(1985) 2 SCC 116]. This Court consider *(sic)* the meaning of the word "regulation" in *Air India Statutory Corporation etc. vs. United Labour Union & Ors. etc.* [1996(9) SCALE 70 paragraph 56 at 104-05]. Therein, the Contract Labour (Regulation and Abolition) Act, 1970 came for consideration. The question was whether the word "regulation" would include regularisation of the contract labour in the establishment in which contract labour system was abolished, though it was not expressly provided. A Bench of three Judges had held that the word "regulation", in the absence of restrictive words, must be regarded as plenary in the larger public interest. By necessary implication it includes to do everything which is indispensable for the purpose of carrying out the purposes in view. Accordingly, it was held that though no express provision was made in the Contract Labour Regulation and Abolition Act to regularise the services of the contract labour, working in an establishment after the abolition of contract labour, by necessary implication, the word `regulation' includes the power to regularise their services as permanent employees in the establishment. Therefore, the word "regulate" the allotment of land to members of Scheduled Tribes in scheduled area in the Fifth Schedule by Clause 5(2)(b) must be read as a whole to ensure regulation of the land only to and among the members of the Scheduled Tribes in the Scheduled area. In the light of the provisions contained in clause (a) of sub-para (2) of para 5, there is implied prohibition on the State's power of allotment of its land to non-tribals in the Scheduled Areas. When so read there is no incompatibility and inconsistency between the power of the executive Government and the Constitution and conjoint operation would elongate the good governance of the Scheduled Areas. So, while prohibiting transfer of land between natural persons, i.e., tribes and non-tribals and preventing non-tribals to purchase from or transfer to another non-tribal, his right, title or interest in the land in the scheduled area, at the same breathe would not be permissible for the Government to transfer their land to a non-tribal except for equally competing public purpose. The answer obviously should be that it is permissible to the Government to transfer its lands to the non-tribals. This negative answer leads to effectuate the constitutional objective to preserve the land in the scheduled area to the tribals, prohibits the Government from allotting their land to the non-tribals; prohibits infiltration of the non-tribals into the scheduled area and prevents exploitation of the tribals by non-tribals in any form. This purposive interpretation would ensure distributive justice among the tribals in this behalf and elongates the constitutional commitment. Any other interpretation would sow the seed beds to disintegrate the tribal autonomy, their tribal culture and frustrate empowerment of them, socially, economically and politically, to live a life of equality, dignity of person and equality of status.

88. It would, therefore, be clear that the executive power of the State to dispose of its property under Article 298 is subject to the provisions in the Fifth Schedule as an integral scheme of the Constitution. The legislative power of the State under Article 245 is also subject to the Fifth Schedule, to regulate the allotment of the Government land in the Scheduled Areas. Obviously, therefore, the State legislature of Andhra Pradesh has now imposed total prohibition under Mines Act to transfer its lands to the non-tribals. Doubtless that under Article 298, the State exercises its power of disposal for public purpose. When two competing public purposes claim preferential policy decision, option to the State should normally be to elongate and achieve constitutional goal. Secondly, the constitutional priority yields place to private purpose, though it is hedged by executive policy. As a facet of interpretation, the Court too adopts purposive interpretation tool to effectuate the goals set down in the Constitution. Equally, the executive Government in its policy options requires to keep them in the backdrop and regulate disposal of their land-property in accordance with the constitutional policy, executive decision backed by public policy and, at the same time, preserve paramount Tribal interest in the scheduled area. No abstract principle could be laid in that behalf. Each case requires examination in the backdrop of the legislative/executive action, its effect on the constitutional objectives and the consequential result yields therefrom. The law relating to the power of the President under the Constitution of U.S.A. as has been interpreted by the Supreme Court of U.S.A. or the executive power of the Queen under the scheme in English unwritten Constitution transformed by Convention does not assist us much in this behalf. Shri Chowdhary also cited an article "The Notion of a Living

Constitution" written by William H. Rehnquist, the present Chief Justice of Supreme Court of USA [Texas Law Review Vol. 54, 693] emphasising that the Executive should have full freedom in exercising its executive power and the Court cannot limit the executive power by interpretation of a statute or regulation. This also is of no assistance since the Constitution of India conferred express power of judicial review on the constitutional Courts, i.e., Supreme Court of India and High Courts under Article 32 and 226 of the Constitution respectively. From the aforestated constitutional perspective and the interpretation of the words `person' and `regulation' put up in the earlier parts of the judgment, the question arises: whether the word `person' under Section 3(1) of the Regulation would include the State Government.

89. Shri Rajeev Dhavan, learned senior counsel for the appellant, contended that the word 'person' in Section 3(1)(a) requires interpretation, keeping in view the contextual constitutional history of prohibition on transfer of the land by a tribal to a non-tribal including that of the Government land, differently depending upon the context in which it has occurred in the first part of Section 3(2)(a) the word 'person' may be considered in a generic sense and in the second part thereof to mean a natural person. Prohibition on the transfer of the land by a tribal to a non-tribal visualises transfer between natural persons. The factum of membership of the person as a tribe does not necessarily cut down the width of the word 'person', namely, legal person taken alongside the natural person. The word 'person' requires interpretation in the natural sense of the context in which it is used. Legal person may be natural, artificial or statutory person. The words "whether or not" in clause 3(2)(a) are in the nature of clarification and it would not cut down the contextual meaning. The words "such person" in the first part of Section 3(1)(a) must be interpreted to mean transferor, namely, artificial or statutory person apart from natural person. The objection of Section 3(1)(a) would be rendered nugatory if the meaning of the word 'person' is confined or restricted to natural person in Section 3(2)(a). Generic person may be a co-operative society, a shareholder of a company and equally a Government constitutionally capable to hold, acquire and dispose of the property. Therefore, the word 'person' used in the first part of Section 3(2)(a) is of wider import in the context of ownership of the land transfer of which is prohibited within the scheduled area to a non-tribal. The word 'person' in the second clause was used in the context of natural persons, i.e., the transfer between the tribes and non-tribes. In that context, the word 'person' was used in a restricted sense. So in the context of the artificial or juridical or statutory person, the word 'person' is of wider import. Any other interpretation would defeat the object of the Fifth Schedule and the Regulation. Similarly, Section 3(2)(b) regulates the reverse effect. The land in Scheduled area is presumed to belong to the tribals treating them as a class. The meaning of the word 'person' does not detract from the meaning of the word 'person' in Section 3(2)(a). Similarly, in Section 3(2)(c) if a non-tribal intends to sell the land to a tribal and if the latter is not willing to purchase the same, the Government may purchase the land from the non-tribal person and distribute it to the tribal (in such manner as may be prescribed). The words "manner of disposal" would indicate that it should be only in favour of the Scheduled Tribes since the sole object of the Fifth Schedule and its species, the regulation, is that the land in Scheduled area requires preservation among the tribals by allotment and their enjoyment by the tribals alone. Section 3(2)(b) reinforces that the assignment or sale of the property should only be in favour of the Scheduled Tribes or a Society composed solely of the members of the Scheduled Tribes. The entire property in Scheduled area is treated to be the property, be it taken from the non-tribals or is of the Government and at the disposal of the State Government. In that context, the learned counsel has drawn our attention to the word 'regulation' in the Fifth Schedule, para 5(2)(b). He also contends that the word 'regulation' requires to be interpreted broadly to preserve not only the tribal autonomy but also to subserve distributive justice in favour of the tribals in the matter of assignment of the land belonging to the Government in their favour. Conversely, there is implied prohibition on the transfer of Government land in favour of the non-tribal. The words "peace and good government" used in para 5(2) also requires to be understood in a wider sense. Good Government must, of necessity, be in accordance with the Constitution and dispensation of socio-economic justice to the tribals including regulation of the land, distribution between the tribals and prohibition on the non-tribals to entrench into scheduled area, to acquire, hold and deal with the lands in scheduled area. It would defeat the object of the Constitution envisaged in the Fifth Schedule thereof because the non-tribals get the Government land transferred in their favour and manoeuvre to have the tribals deprived of their land by other illegal means. The word 'State', therefore, would include within the concept of the word 'person' in Section 3 of the Act. In support thereof, Shri Rajeev Dhavan cited *State of West Bengal v. Union of India* [(1964) 1 SCR 371] and *Madras Electric Corporation case.* He has also drawn our attention to construe the provisions in the context of the whole statute relying upon *Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd. & Ors.* [(1987) 1 SCC 424 para 33 at page 450-51] and *C.E.S.C. Ltd. & Ors. v. Subhash Chandra Bose & Ors.* [(1992) 1 SCC 441 t 464]. He further contends that in view of the object, the word may be read broadly, in the light of public purpose and social and economic justice which the Regulation seeks to serve. He cited, in support of his contention, the following decisions, viz. *The State of Bombay v. R.M.D. Chamarbaugwala* [1957 SCR 874 at 892-95]; *Ishwar Singh Bindra & Ors. v. The State of U.P.* [(1969) 1 SCR 219 at 225]; *Nedurimili Janardhana Reddy v. Progressive Democratic Students' Union & Ors.* [(1994) 6 SCC 506 para 6]. A word may be read in different contexts in a different way. He cited that the word 'sale' used in the context of freedom of speech and expression was given different meaning in *Printers (Mysore) Ltd. & Ors. v. Asstt. Commercial Tax Officer & Ors.* [(1994) 2 SCC 434 at 445]; *Pushpa Devi & Ors. v. Milkhi Ram (dead) by his Lrs.* [(1990) 2 SCC 134] and *Commissioner of Income-tax, Bangalore v. J.H. Gotla Yadagiri* [(1985) 4 SCC 343]. The word 'vest' was interpreted with a different meaning in *Dr. M. Ismail Faruqui & Ors. v. Union of India & Ors.* [(1994) 6 SCC 360 at pp. 393, 404-05 and 423]. He therefore, contends that different meaning is required to be given to the word 'person' as used in Section 3(1)(a), 3(1)(b) and 3(1)(c) of the Act. We find force in his contention.

90. M/s. Sudhir Chandra, L. Nageswara Rao, A.V. Rangam and their companion learned advocates, contended that in Section 3 of the Regulation read with the Fifth Schedule, para 5 sub-clauses 2(b), the word "person" would be understood in its natural and contextual perspective which would indicate that the word 'person' would be applicable only to natural persons. The learned counsel laid great emphasis on the Statement of Objects and Reason for amendment of the Regulation in 1970.

According to the learned counsel, the golden rule of interpretation is that the legislative intent is to be effectuated by giving natural and grammatical meaning to the word used in a statute. Only when the court finds ambiguity of the expression used by the statute, principles of interpretation would be applicable. In this case, there is no such ambiguity. The word `person' is simple and plain, connoting prohibition on transfer of land between natural persons, namely, tribals and non-tribals. That is made manifest by the Statement of Objects and reasons of the amended Regulation which envisages that the Regulation was brought on statute to prohibit alienation of the lands in the scheduled area by tribal in favour of a non-tribal. By necessary implication the Government is not intended to be included in the word `person'. Shri P.A. Choudhary, learned Senior counsel, further elaborated, stating that Section 3(2)(b) amplifies that the land is purchased from a non-tribal by the Government or where the heirs of a tribal transferor are not willing to take back the property, assignment or disposal of the said property in favour of another tribal as "a property at the disposal of the State Government" and prosecution for violation of the Regulation under Section 6A by way of penalty, are not intended to be applied to the Government when the transfer is made in violation of the provisions of the Regulation; and, therefore, the word `person' should be given restricted meaning applicable only to natural person.

91. Sri Sudhir Chandra further contended that Clause 2(a) of para 5 of the Fifth Schedule restricts transfer of land by or among members of the Scheduled Tribes; clause (b) regulates the allotment of land to members of the Scheduled Tribes in such area; and clause (c) regulates money-lending business by non-tribals to members of the Scheduled Tribes in scheduled area and para 5(3) gives power to the Governor to regulate by law or to repeal or awend any Act of Parliament or of the Legislature of the State or any existing law in relation to that area. The purpose, thereby, is to prevent exploitation of tribals by non-tribals. The State Government is not expected to exploit the tribals. The Fifth Schedule does not prevent establishment of any factory or an industry or any scheme for development of the tribal area by non-tribals. Exploitation of valuable minerals by the non-tribals is not intended to be prevented by Fifth Schedule to the Constitution. In particular, they laid emphasis on para 5, clause 2(b) of the Fifth Schedule, which does not prohibit the allotment of the land to the non-tribals. It is contended that the word "regulate" used therein does not necessarily imply prohibition. If such a construction is adopted, it would hinder the progress of the tribal areas. It introduces mutually internal and external contradictions. Harmonious interpretation, therefore, has to be adopted to make the Regulation nd the Fifth Schedule work as a consistent whole, regulating prohibition on transfer of land in the tribal areas to the non-tribal natural persons only. Thereby, the word `person' should be understood in that perspective. the government and juristic persons are outside the purview of paras 5(2) and 5(3) of the Fifth Schedule and Section 3 of the Regulation.

92. The respective contentions give rise to the question: whether the regulation prohibits the State Government transferring its lands to non-tribals?

93. The historical evidence collected and culled out from B. Shiva Rao's "In the making of the Constitution" and the scheme of the representative form of Government furnishes background material for interpretation of the word "person". It is well established rule of interpretation that the words of width issued in the Constitution requires wide interpretation to effectuate the goals of establishing an egalitarian social order supplying flesh and blood to the glorious contents and context of those words and to enable the citizen to enjoy the rights enshrined in the Constitution from generation to generation. In *Ashok Kumar Gupta vs. State of U.P.* [JT 1997 (4) SC 451], this Bench has applied the rule of wide interpretation of the Constitution. It bears no reiteration; reasons given therein *mutatis mutandis* would *proprio vigore* apply to the fact situation. From the above perspective, having given our deep and anxious consideration to the respective contentions of the learned counsel for the parties, we are of the considered view that the interpretation put up by Shri Rajeev Dhavan merits acceptance. It is seen and bears recapitulation that the purpose of the Fifth and Sixth Schedules to the Constitution is to prevent exploitation of truthful, inarticulate and innocent tribals and to empower them socially, educationally, economically and politically to bring them into the mainstream of national life. The founding fathers of the Constitution were conscious of and cognizant to the problem of the exploitation of the Tribals. They were anxious to preserve the tribal culture and their holdings. At the same time, they intended to provide and create opportunities and facilities, by affirmative action, in the light of the Directive Principles in Part IV, in particular, Articles 38, 39, 46 and cognate provisions to prevent exploitation of the tribals by ensuring positively that the land is a valuable endowment and a source of economic empowerment, social status and dignity of persons. The Constitution intends that the land always should remain with the tribals. Even the government land should increasingly get allotted to them individually and collectively through registered Cooperative Societies or agricultural/farming Cooperative Societies composed solely of the tribals and would be managed by them alone with the facilities and opportunities provided to them by the Union of India through their Annual Budgetary allocation spent through the appropriate State Government as its instrumentalities or local body in a planned development so as to make them fit for self-governance. The words "peace and good government" used in the Fifth Schedule require widest possible interpretation recognised and applied by this Court in *T.M. Kanniyan v. Income-tax Officer, Pondicherry & Anr.* [(1968) 2 SCR 103 at 107-08] and *Queen v. Russell* [(1982) 7 AC 829].

94. By the Constitution [73rd Amendment] Act, 1992 amended Part IX of the Constitution, the principle of self-government based on democratic principles at Gram Panchayat and level upwards was introduced through Articles 343 to 343ZG. As an integral scheme thereof, the Andhra Pradesh (Provision of the Panchayats Extension to Scheduled Areas) Act, 1966 came to be made. Section 4 (d) of that Act provides that "(N)otwithstanding anything contained under Part IX of the Constitution, every Gram Sabha shall be competent to safeguard and preserve.... community resources". Clause (j) of Section 4 provides that planning and management of minor water bodies in the Scheduled Areas shall be entrusted to the Panchayats at the appropriate level. Under clause (m) (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of a Scheduled Tribe and under clause (iv) the power to manage village markets, by whatever name called, are entrusted to the Gram Panchayats. It would indicate that the tribal autonomy of management of their resources including the prevention of the alienation of the land in the Scheduled Areas and taking of appropriate action in that behalf for restoration of the same to the tribals, is entrusted to the Gram Panchayats.

95. The main maxim *"reddendo singula singulis"* will apply to the interpretation of the word `person' so that the general meaning of the word "person" in its generic sense with its width would not be cut down by the specific qualification of one species, i.e., natural "person" when it is capable to encompass, in its ambit, natural persons, juristic persons and constitutional mechanism of governance in a democratic set up. It has already been held, and bears no repetition, that the State, by Cabinet form of Government, is a *pesona ficta,* a Corporate sole. Constitution empowers the State to acquire, hold and dispose of their property. The Governor in his personal responsibility is empowered to maintain peace and good government in scheduled area. The Fifth Schedule to the Constitution empowers him to regulate allotment of the land by para 5(2)(b) read with Section 3 of the Regulation of the land be it between natural persons, i.e., tribals and non-tribals; it imposes total prohibition on transfer of the land in scheduled area. The object of the Fifth Schedule and the Regulation is to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic and political justice for preservation of peace and good government in the Scheduled Area. Therefore, all relevant clauses in the Schedule and the Regulation should harmoniously and widely be read so as to elongate the aforesaid constitutional objectives and dignity of person to the Scheduled Tribes, preserving the integrity of the Scheduled Areas and ensuring distributive justice as an integral scheme thereof. Clauses (a) and (c) of sub para (2) of para 5 of the Fifth Schedule prohibits transfers *inter vivos* between tribals and non-tribal natural persons and prevents money-lenders to exploit the tribals. Clause (b) intends to regulate allotment of land not only among tribals but also prohibits allotment of the land belonging to the government to the non-tribals. In that behalf, wider interpretation of "regulation" would include "prohibition" which should be read into that clause. If so read, it subserves the constitutional objective of regulating the allotment of the land in Scheduled Areas exclusively to the Scheduled Tribes. Clause 5(2)(b) ensures distributive justice of socio-economic empowerment which yields meaningful results in reality. If purposive construction, in this backdrop is adopted, no internal or external contradiction would emerge. The word "person" would include both natural persons as well as juristic person and constitutional Government. This liberal and wider interpretation would maximise allotment of Government land in scheduled area to the tribals to make socio-economic justice assured in the Preamble and Articles 38, 39 and 46, a reality to the tribals. The restricted interpretation would defeat the objective of the Constitution. The word "person" would be so interpreted as to include State or juristic person Corporate sole or *persona ficta.* Transfer of land by the juristic persons or allotment of land by the State to the non-tribals would stand prohibited, achieving the object of para 5(2) of the Fifth Schedule of the Constitution and Section 3 of the Regulation. If the word `pesona' is interpreted to mean only natural persons, it tends to defeat the object of the Constitution, the genus and the Regulation, its species. As a corollary, by omission in the final draft of the Fifth Schedule of the power of the State Government to transfer its land to the non-tribals with the sanction of a competent authorised officer or authority would, by interpretation brought into effect and the object of the Constitution would easily be defeated. We are, therefore, inclined to take the view that the word `person' includes the State Government. The State Government also stands prohibited to transfer by way of lease or any other form known to law, the Government land in scheduled area to non-tribal person, be it natural or juristic person except to its instrumentality or a Co-operative

Society composed solely of tribes as is specified in the second part of Section 3(1)(a). Any other interpretation would easily defeat the purpose*(sic)* exclusive power entrusted by the Fifth Schedule to the Governor. If the Cabinet form of Government would transfer the land of the Government to non-tribals peace would get disturbed, good governance in scheduled area would slip into the hands of the non-tribals who would drive out the tribals from scheduled area and create monopoly to the well developed and sophisticated non-tribals; and slowly, and imperceptible, but surely, the land in the scheduled area would pass into the lands of the non-tribals. The letter of law would be an empty content and by play of words deflect the course of justice to the tribals and denude them of the socio-economic empowerment and dignity of their person.

96. The word "person" in Section 3(1)(a) would, therefore, be construed to include not merely the natural persons, in the context of tribal and non tribal who deal with the land in Scheduled Areas by transfer *inter vivos* but all juristic person in the generic sense, including the Corporation aggregate or Corporation sole, State, Corporation, partnership firm, a company, any person with corporate veil or persons of all hues, either as transferor or transferee so that the word `regulate in para 5(2)(b) of the Fifth Schedule in relation to the land in Scheduled Areas would be applicable to them either as transferor or transferee of land in a Scheduled Area. It, thus, manifests the constitutional and legislative intention that tribals and a Cooperative Society consisting solely of tribal members alone should be in possession and enjoyment of the land in the scheduled area as dealt with in various enactments starting from Gunjam and Vizianagaram Act, 1839 to the present regulation.

97. This interpretation of ours is consistent with the constitutionality of the Regulation as was upheld by this Court in *P. Rami Reddy & Ors. etc. v. State of A.P. & Anr. etc.* [(1988) Supp. 1 SCR 443]; *Lingappa Pochanna Appelwar v. State of Maharashtra and Anr.* [(1985) 1 SCC 479] and *Manchegowda and Ors. v. State of Karnataka and Ors.* [(1984) 3 SCC 301]. There is no internal and external contradiction in this process of harmonious and purposive interpretation of para 5(2)(a) of the Fifth Schedule which regulates transfers between natural persons; Para 5(2)(b) encompasses within its ambit, the transfer by the Government of its land to a non-tribal and clause (c) or the relevant clauses in Sections 3 and 4 of the Regulation. The Regulation prevents exploitation of the tribals through the State Government; from the other end, it does not allow parting with of their land and prevents induction of non-tribals into the scheduled area by allotment of the land or by regulating allotment of the land, be it private or private corporate aggregate. This interpretation *per se,* therefore, is public law interpretation to subserve the constitutional purpose without recourse to private law principles.

98. In *Minerva Mills Ltd. & Ors. v. Union of India & Ors.* [(1981) 1 SCR 206], the Constitution Bench had held that the edifice of our Constitution is built upon the concept crystalised in the Preamble. We "the People" resolved to constitute ourselves a socialist State which carries with it the obligation to secure to the people, justice - social, economic and political. We, therefore, put Part IV into our Constitution containing Directive Principles of State Policy which specifies the socialistic role to be achieved. In *D.S. Nakara & Ors. v. Union of India* [(1983) 2 SCR 165 at 187F to 189H], another Constitution Bench had dealt with the object to amend the Preamble by the constitution (42nd Amendment) Act and pointed out that the concept of Socialist Republic was to achieve socio-economic revolution to end poverty, ignorance and disease and inequality of opportunity. It was pointed out that socialism is a much misunderstood word. Values determine contemporary socialism - pure and simple. The principal aim of socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people especially to provide security from cradle to grave. The less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be prohibited. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. The Preamble directs the centers of power, Legislature, Executive and Judiciary - to strive to set up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society under rule of law though it is a long march, but during the journey to the fulfilment of goal every State action including interpretation whenever taken, must be directed and must be so interpreted as to take the society towards establishing egalitarian socialist State, the goal. It was, therefore, held that "it, therefore, appears to be well established that while interpreting or examining the constitutional validity of legislative/administrative action, the touchstone of Directive Principles of State Policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other."

99. Pt. Jawaharlal Nehru, while participating in the discussion on the Constitution (First Amendment) Bill, had stated that the Directive Principles are intended to bring about a socio-economic revolution and to create a new socio-economic order where there will be social and economic justice for all and for everyone, not only to fortunate few but also the teeming millions of India who would be able to participate in the fruits of freedom and development and exercise the fundamental rights.

100. Dr. Ambedkar, while introducing the Preamble of the Constitution for discussion by the Constituent Assembly, had stated that the purpose of the Preamble is to constitute "a new society in India based on justice, liberty and equality". The Constituent Assembly debates of November 1948 at pages 230 to 357 do indicate that the Directive Principles intended to provide life blood to social, economic and political justice to all people. Some of the members like Mahavir Tyagi, Professor K.T. Shah, Dr. Saxena etc. pleaded for incorporation of socialism as part of the Preamble but Dr. Ambedkar, the father of the Constitution, while rejecting the amendment, made it clear that the socio-economic justice provided in the Directive Principles and the Fundamental Rights given in Chapter III would meet the above objective without expressly declaring India as a socialist State in the Constitution. Alladi Krishnaswamy Ayyer supported Dr. Ambedkar and had stated that "the Constitution, while it does not commit the country to any particular form of economic structure of social adjustment, gives ample scope for the future legislature and the future Parliament to evolve any economic order and undertake any legislation they choose in public interest". Pandit Jawaharlal Nehru in his speech also emphasised the need to enter into a new social order in which "there would be valid growth in the standard of living of all the people of India with equitable distribution of wealth and equality of opportunity and status of all". Dias, in his "jurisprudence" (5th Edn.) on `distributive justice' in Chapter 4 at page 66, has stated that justice is not synonymous with equality; equality is one aspect of it. Justice is not something which can be captured in a formula once and for all. It is a process, a complex and shifting balance between many factors including equality. Justice is never given, it is always a task to be achieved. Justice is just allocation of advantages and disadvantages, preventing the abuse of power, preventing the abuse of liberty by providing facilities and opportunities to the poor and disadvantaged and deprived social segments for a just decision of disputes adapting to change.

101. Justice P.B. Sawant, former Judge of this Court, in his "Socialism under the Indian Constitution" had stated at page 2 that today socialism has come to be associated with certain social and economic arrangements and a way of life in a socialist economy that the resources of the society are owned by the State as a whole and are used for the benefit of all, for ensuring all basic human rights to every member of the society and not for the profit of a few. By human rights is meant - all economic, political, social and cultural rights which are necessary for an individual to realise his full potential. In a socialist society, social, political and economic inequalities disappear and none is allowed to possess economic power to the extent that he is in a position to exploit or dominate others. It is only such society which can guarantee human dignity, stability, peace and progress.

102. Mahatma Gandhiji, the father of the nation, in'Harijans' dated October 9, 1937 had stated that "true economics never militates against the highest ethical standard, just as all true ethics to be worth its name must at the same time be also good economics. An economics that inculcates Mammon worship, and enables the strong to amass wealth at the expense of the weak, is a false and dismissal science. It spells death. True economics, on the other hand, stands for social justice, it promotees the good of all equally, including the weakest, and is indispensable for decent life." Dr. V.K.R.V. Rao, one of the eminent economists of India, in his "Indian Socialism Retrospect and Prospect" has stated at page 46-47 that a socialist society has not only to bring about equitable distribution but also to maximise production. It has to solve problems of unemployment, low income and mass poverty and bring about a significant improvement in the national standards of living. At page 47, he has stated that socialism, therefore, requires deliberate and purposive action on the part of the State in regard to both production and distribution and the fields covered are not only savings, investment, human skills and use of science and technology, but also changes in property relations, taxation, public expenditure, education and the social services. A socialist society is not just a give-away society nor is it only concerned with distribution of income. It must bring about full employment as also an increase in productivity.

103. A socialistic society involves a planned economy which takes note of time and space considerations in the distribution and pricing of output. It would be necessary for both the efficient working of socialist enterprises and the prevention of unplanned and anarchical expansion of private enterprises. The Indian conception of socialism with democracy with human dignity is by creation of opportunities for the development of each individual and not the destruction of the individual. It is not for the merging of the individual in the society. The Indian socialist society wants the development of each individual but requires this development to be such that it leads to the upliftment of the society as a whole. Fundamental duties in Chapter VI-A of the Constitution to bear meaningful content, facilities and opportunity on equal footing is the fundamental condition of a socialist society. The more the talent from backward classes and areas get recognition and support, the more socialist will be the society. Public sector and private sector should harmoniously work. The Indian approach to socialism would be derived from Indian spiritual traditions. Buddhism, Jainism, Vedantic and Bhakti Hinduism, Sikhism, Islam and Christianity have all contributed to this heritage rooted to respect for human dignity and human equality. While imposing restrictions on the right to private property even to the extent of abolishing it where necessary in the social and public interest, it permits private enterprise in economic activity and makes for a mixed economy rather than a completely socialised economy. It abhors violence and class war and heirarchical class structure and pins as faith on non-violence, sacrifice, and dedication to the service of the poor and as a natural consequence, its implementation is envisaged through Parliamentary democracy planned economy and the rule of law rather than through a violent revolution or a dictatorship in any form. Indian socialism, therefore, is different from Marxist or scientific socialism.

104. To achieve the goal set down in the Preamble, the Directive Principles and fundamental rights, the Constitution envisaged planned economy. The Planning Commission has been given the constitutional status for the above purpose. The Third Five Year Plan document extracts the basic features of the socialist pattern of society thus:

> "...Essentially, this means that the basic criterion for determining lines of advance must not be private profit, but social gain, and that the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increase in national income and employment but also in greater equality in incomes and wealth... The benefits of economic development must accrue more and more to the relatively less privileged classes of society, and there should be progressive reduction of the concentration of incomes, wealth and economic power... ...The socialised pattern of society is not to be regarded as some fixed or rigid pattern. It is not rooted in any doctrine or dogma... It is neither necessary nor desirable that the economy should become a monolithic type of organisation offering little play for experimentation either as to forms or as to modes of functioning. Nor should expansion of the public sector mean centralization of decision-making and of exercise of authority.... The accent of the socialist pattern of society is on the attainment of positive goals, the raising of living standards, the enlargement of opportunities for all, the promotion of enterprise among the disadvantaged classes and the creation of a sense of partnership among all sections of the community. These positive goals provide the criteria for basic decisions. The directive principles of State policy in the Constitution have indicated the approach in broad term; the socialist pattern of society is a more concretised expression of this approach. Economic policy and institutional changes have to be planned in a manner that would secure economic advance along democratic and egalitarian lines..."

105. Mr. G.D.H. Cole, one of the leading socialist of U.K., in his speech "The Growth of Socialism" published in `Law and Opinion in England in the 20th Century' (Morris Ginsberg, Editor) at page 79-80, has stated that socialism is a movement aiming at greater social and economic equality and using extended State action as one of its methods, perhaps the most distinctive but certainly not the only one needed to be taken into account. The affairs of the community shall be so administered as to further the common interests of ordinary men and women by giving to everyone, as far as possible, an equal opportunity to live a satisfactory and contended existence, coupled with a belief that such opportunity is incompatible with the essentially unequal private ownership of the means of production. It requires not merely collective control of the uses to which these are to be put, but also their collective ownership and disinterested administration for the common benefit. This basic idea of socialism involves not only the socialisation of the essential instruments of production, in the widest sense, but also the abolition of private incomes which allow some men to live without rendering or having rendered any kind of useful service to their fellowmen and also the sweeping away of forms of educational preference and monopoly which divide men into social classes. It involves, in effect, whatever is needful for the establishment of what socialists call a 'classless society' and in pursuance of this aim its votaries necessarily look for support primarily, though not exclusively, to the working classes, who form the main body of the less privileged under the existing social order. Socialists seek to reduce economic and social inequalities not only in order to remove unearned sources of superior position and influence, but also in order to narrow the gaps between men to such as are compatible with all men being near enough together in ways of living to be in substance equals in their mutual intercourse.

106. In *Excel Wear Etc. vs. Union of India & Ors.* [(1979) 1 SCR 1009], the Constitution Bench had held at pages 1030-31 that the concept of socialism or socialist state has undergone changes from time to time from country to country and from thinker to thinker. But some basic concept still holds the field. The doctrinaire approach to the problem of socialism be eschewed and the pragmatic one should be adapted. So long as the private ownership of an industry is recognised and governs an overwhelmingly large proportions of an economic structure, it is not possible to say that principles of socialism and social justice can be pushed to such an extreme so as to ignore completely or to a very large extent the interest of another section of the public, namely, the private ownership of the undertaking. In other words, the object of intermediation should be co-existence and flourishing of mixed economy. In *State of Karnataka vs. Shri Ranganatha Reddy & Anr. etc.* [(1978) 1 SCR 641], a Bench of nine Judges of this Court considered nationalisation of the contract carriages. In that behalf, it was held that one of the principal aims of socialism is the distribution of the material resources of the community in such a way as to subserve the common good. This principle is embodied under Article 39(b) of the Constitution as one of the essential directive principles of State polity. Therein, this Court laid stress on the word 'distribute' as used in Article 39(b) being a key-word of the provision emphasising that "The key word is distribution and the genus of the Article, if we may say so, cannot but be given full play as it fulfils the basic purpose of restructuring the economic order. Each word in this Article has a strategic role and the whole Article is a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources, its goal is to undertake distribution as best to subserve the common good. It reorganises by such distribution the ownership and control."

107. In *Sanjeev Coke Manufacturing Company vs. Bharat Coking Coal Ltd. & Anr.* [(1983) 1 SCR 1000] another Constitution Bench reiterated the above view; while considering Article 39(b) of the Constitution, at page 1020, this Court had held that the broad egalitarian principle of economic justice was implicit in every directive principle and, therefore, a law designed to promote a directive principle, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and desirable constitutional goal of social and economic justice for all. If the law was aimed at the broader egalitarianism of the Directive Principles, Article 31C protected the law from needless, unending and rancorous debate on the question whether the law contravened Article 14's concept of the equality before the law. The law seeking the immunity afforded by Article 31C must be a law directing the policy of the State towards securing a Directive Principle and the connection with the Directive Principle must not be some remote or tenuous connection. The object of the nationalisation of the coal mine is to distribute nations resources. It was held at page 1023 that though the word 'socialist' was introduced in the Preamble by late amendment of the Constitution, that socialism has always been the goal is evident from the Directive Principles of the State policy. The amendment was only to emphasise the urgency. Ownership, control and distribution of national productive wealth for the benefit and use of the community and the rejection of a system of misuse of its resources for selfish ends is what socialism is about and the words and thought of Article 39(b) but echo the familier language and philosophy of socialism as expounded generally by all socialist writers. Socialism is, first of all, a protest against the material and cultural poverty inflicted by capitalism on the mass of the people. Nationalisation of coal mine for distribution was upheld as a step towards socialism. In *State of Tamil Nadu etc. etc. vs. L. Abu Kavur Baj & Ors. etc.* [(1984) 1 SCR 725], the same extended meaning of distribution of material resources in Article 39(b) was given by another Constitution Bench to uphold Tamil Nadu State Carriages and Contract Carriages (Acquisition) Act. Similar view was reiterated by a three Judge Bench in *Madhusudan Singh & Ors. vs. Union of India & Ors.* [(1984 2 SCC 381]. In *Air India case* the concept of socialism was elaborated and applied to fill in the gaps of the Act to regularise the services of the contract labourers in the establishments of Air India.

108. It is an established rule of interpretation that to establish Socialist Secular Democratic Republic, the basic structure under the rule of law, pragmatic broad and wide interpretation of the Constitution makes social and economic democracy with liberty, equality of opportunity, equality of status and fraternity a reality to "we, the people of India", who would include the Scheduled Tribes. All State actions should be to reach the above goal with this march under rule of law. The interpretation of the words `person' `regulation' and `distribution' require to be broached broadly to elongate socio-economic justice to the tribals. The word `regulates' in para 5(2)(b) of the Fifth Schedule to the Constitution and the title of the Regulation would not only control allotment of land to the Tribes in Scheduled area but also prohibits transfer of private or Government's land in such areas to the non-tribals. While later clause (a) achieves the object of prohibiting transfers *inter vivos* by tribals to the non-tribals or non-tribals *inter se*, the first clauses includes the State Government or being a juristic person integral scheme of para 5(2) of Schedule. The Regulation seeks to further achieve the object of declaring with a presumptive evidence that the land in the Scheduled Areas belongs to the Scheduled Tribes and any transfer made to a non-tribal shall always be deemed to have been made by a tribal unless the transferee establish the contra. It also prohibits transfer of the land in any form known to law and declared such transfer as void except by way of testamentary disposition by a tribal to his kith and kin/tribal or by partition among them. The regulation and its predecessor law in operation in the respective areas regulate transfer between a tribal and non-tribal with prior permission of the designated officer as a condition precedent to prevent exploitation of the tribals. If a tribal is unwilling to purchase land from non-tribal, the State Government is enjoined to purchase the land from a non-tribal as per the principles set down in the regulations and to distribute the same to a tribal or a cooperative society composed solely of tribals.

Whether lease is a transfer.

109. Section 105 of the Transfer of Property Act defines 'lease' as a transfer of right to enjoy immovable property made by the transferor to the transferee for a certain period, express or implied, for consideration of price paid or promised etc. to the transferor by the transferee who accepts the transfer on such terms. Thereby the lease creates a right or an interest in enjoyment of the demised property on terms and conditions contained therein to remain in possession thereof for the duration of the period of lease unless it is determined in accordance with the contract or the statute. It is an encumbrance on the right to be in possession; use an enjoyment of the land by the transferee. Lease is the outcome of separation of ownership and possession. It may be either rightful or wrongful. If it is rightful, it is an encumbrance on the owner's title but if it is wrongful the transferee acquires no lawful right to enjoy the interest therein. Section 11(5) of the Mines and Minerals (Regulation and Development) Act, 1957 brought by State Amendment Act prohibits grant of mining lease in Scheduled Areas in favour of the non-tribals. It reads as under:

> "Notwithstanding anything contained in this Act no prospecting licence or mining lease shall be granted in the Scheduled areas to any person who is not a member of the Scheduled Tribes:
>
> Provided that this sub-section shall not apply to an undertaking owned or controlled by the State or Central Government or to a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 which is composed solely of members of Scheduled Tribes.
>
> Explanation: For the purpose of this sub-section;
>
> (a) the expression "Scheduled Areas" shall have the same meaning assigned to it in clause (25) of article 366 of the Constitution of India; and
>
> (b) the expression "Scheduled Areas" shall have the same meaning assigned to it in paragraph 6 of the Fifth Schedule to the Constitution of India."

110. It brings out and effectuates public policy envisaged in the Fifth Schedule of the Constitution and the Regulation. Undoubtedly, it is prospective but the underlying principle would permeate the purpose of interpretation that the State Government, being a person is regulated under Section 3 of the Regulation prohibit transfer of their land situated in the Scheduled Areas in which mines are discovered or for any other purpose. G.O.Ms. No. 971/Rev. B of 1969 provides that Government land should not be given to non-tribals. The contention of Shri Sudhir Chandra that the Government being empowered to operate the Regulation, by implication, the Regulation does not apply to Government land per force, is untenable in view of the above unambiguous constitutional, legislative and executive policy. The further contention that there is no need for its incorporation and that the Government would be prohibited from transferring for public purpose, is untenable. They do not detract from legal reasoning and purposive interpretation. The transfer of such land for a public purpose, viz., to construct a hospital or to set up a bank by the Government or its instrumentalities and for any public purpose etc., is not prohibited for two reasons, namely, (i) there is no transfer of interest in the Government land in favour of a non-tribal; (ii) there is no transfer of its land in law to itself. The contention, therefore, that the Regulation prohibits transfer of Government land for its public purpose is unsustainable. The further contention that even philanthrophic persons imbued with social zeal and spirit to ameliorate the social status and economic position of the tribals, would also be prevented to serve them is untenable. What the Regulation prohibits is the transfer of right, title and interest in the immovable property in scheduled area in favour of non-tribals. There is no prohibition on non-tribals philanthrophist to organise, through tribals and a Cooperative Society composed solely of tribals, actions to ameliorate socio-economic status of the tribals in the Scheduled Area. The further contention that the rich mineral wealth being a national asset cannot be kept unexploited which is detrimental to the national development, is devoid of force. Instead of getting the minerals it exploited through non-tribals, by exploitation of tribals, the minerals could be exploited through an appropriate scheme, without disturbing ecology and forest, by the tribals themselves, either individually or through Cooperative Societies composed solely of the tribes with the financial assistance of the State or its instrumentalities. It would itself would be an opportunity to the tribals to improve their social and economic status and a source of their economic endowment and empowerment and would give them dignity of person, social and economic status and an opportunity to improve their excellence. In the Constituent Assembly a demand was made of allotment of mining areas in North-Eastern States to the autonomous bodies; the Constituent Assembly instead approved payment of royalty. At many a place, the minerals deposits may be situated in tribal area. In the light of the language used in Section 3 of the Regulation and Section 11(5) of Mining Act, we have examined the question taking aid of the source thereof, i.e., para 5(2)(a) and (b) of the Fifth Schedule and interpreted the word 'person' to include State Government.

111. The object of Fifth and Sixth Schedules to the Constitution, as seen earlier, is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals *inter se* but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled areas for their economic empowerment, social status and dignity of their person. Equally exploitation of mineral resources national wealth undoubtedly, is for the development of the nation. The competing rights of tribals and the State are required to be adjusted without defeating rights of either. The Governor is empowered, as a constitutional duty, by legislative and executive action, to prohibit acquiring, holding and disposing of the land by non-tribals in the Scheduled Areas. The Cabinet, while exercising its power under Article 298, should equally be cognizant to the constitutional duty to protect and empower the tribals. Therefore, the Court is required to give effect to the constitutional mandate and legislative policy of total prohibition on the transfer of the land in Scheduled area to non-tribals.

112. Right to health has been declared to be a fundamental right in *CERC case;* right to education is a fundamental right under Article 46 as held by this Court in *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi*

[1991 (2) SCC] and *J.P. Unni Krishnan v. State of A.P.* [(1993) 1 SCC 645]; right to pollution-free atmosphere has been held to be a part of right to life under Article 21 as held by this Court in *Subhash v/s. State of Bihar* [AIR 1991 SC 420]; right to potable water is a fundamental right as held by this Court in *State of Karnataka V/s. Appa Balu Ingale & Ors.* [(1995) Supp. 4 SCC 469]; right to shelter has been held to be a fundamental right in catena of decisions of this Court starting with *Olga Tellis case.* These are all basic human rights declared under the Universal Declaration of Human Rights and integral part of right to life under Article 21 and other fundamental rights provided in Part III of the Constitution.

113. In the absence of any total prohibition, undoubtedly Article 298 empowers the Governor being the head of the Executive to sanction transfer of its lands. Since the Executive is enjoined to protect social, economic and educational interest of the tribals and when the State leases out the lands in the Scheduled Areas to the non-tribals for exploitation of mineral resources, it transmits the corelative above constitutional duties and obligation to those who undertake to exploit the natural resources should also to improve social, economic and educational empowerment of the tribals. As a part of the administration of the project, the licensee or lessee should incur the expenditure for:

[a] re-forestation and maintenance of ecology in the Scheduled Areas;
[b] maintenance of roads and communication facilities in the Scheduled Areas where operation of the industry has the impact;
[c] supply of potable water to the tribals;
[d] establishment of schools for imparting free education at primary and secondary level and providing vocational training to the tribals to enable them to be qualified, competent and confident in pursuit of employment;
[e] providing employment to the tribals according to their qualifications in their establishment/factory;
[f] establishment of hospitals and camps for providing free medical-aid and treatment to the tribals in the Scheduled Areas;
[g] maintenance of sanitation;
[h] construction of houses for tribals in the Scheduled Areas as enclosures; The expenditure for the above projects should be part of his/its Annual Budget of the industry establishment or business avocation/venture.

114. In this behalf, at least 20 per cent of the net profits should be set apart as a permanent fund as a part of industrial/ business activity for establishment and maintenance of water resources, schools, hospitals, sanitation and transport facilities by laying roads etc. This 20% allocation would not include the expenditure for re-forestation and maintenance of ecology. It is needless to mention that necessary sanction for exemption of said amount from income-tax liability, may be obtained; and the Centre should ensure grant of such exemption and see that these activities are undertaken, carried on and maintained systematically and continuously. The above obligations and duties, should be undertaken and discharged by each and every person/industry/licensee/ lessee concerned so that the constitutional objectives of social, economic and human resource empowerment of the tribals could be achieved and peace and good government is achieved in Scheduled Areas. We have not examined the other Acts in detail but as and when such need arises, they may be examined in the light of the language used therein and the law.

Mining Lease of Government land is whether outside the Regulation.

115. The question then is: whether grant of mining leases lands in the Scheduled Areas belonging to the Government is outside the purview of the Regulation? In the light of the aforestated discussion and the conclusion that the word 'person' would include the State Government, the necessary corollary would be that the transfer of the land in Scheduled Area by way of lease, for mining purpose in favour of non-tribals stands prohibited by para 5(2)(b) of the Fifth Schedule read with Section 3 of the Regulation. It is on record that the non-tribal individuals have transferred their lease hold interest in the mining leases in favour of some of the respondent-companies. The Government stands prohibited to transfer the mining leases to Corporation aggregate etc. except to its instrumentality.

116. The lease being a transfer of an interest in the land or a right to enjoy such property during subsistence of lease, its transfer stands prohibited. It is well settled position of law, by catena of decisions of this Court, that renewal of lease is in reality a fresh grant of lease, though it is called a renewal because it postulates the existence of a prior lease. It has been brought out from record that some of the respondents-companies have got transfer of mining lease in their favour from the individual lessees. This Court in *M/s. Victoria Granites (P) Ltd. v. P. Rama Rao & Ors.* [JT 1996 (9) SC 303] has held that the transfer of mining leases by an individual in favour of a company is void and in effect, would defeat the object of Article 39(b) of the Constitution and would nullify the object of distributive justice of the largess of the State to accord economic justice to individuals to improve socio-economic status and to secure dignity of persons. Therefore, the transfer of lease or renewal of mining lease in favour of some of the respondents is void as it defeats the constitutional and statutory objectives.

117. It is seen that in one case, the transfer was claimed to have been made in favour of the State instrumentalities, i.e., A.P.S.M.D. Corporation Ltd. It has already been held that transfer of the Government land in favour of its instrumentalities, in the eye of law, is not a transfer but one of entrustment of its property for public purpose. Since, admittedly, a public Corporation acts in public interest and not for private gain, such transfer stands excluded from the prohibition under para 5(2)(b) of the Fifth Schedule and Section 3(1)(a) of the Regulation. Such transfer or lease, therefore, stands upheld. But a transfer of mining leases to non-tribal natural persons or company, corporation aggregate or partnership firm etc. is unconstitutional, void and inoperative.

118. The A.P.S.M.D. is required to exploit minerals in conformity with law, namely, Forest Conservation Act, 1980, E.P. Act etc.

ENCLOSURES WHETHER GOVERNMENT CAN LEASE THE LANDS TO MINING OPERATION

119. It is an admitted position that five enclosures comprise of 426 acres of land occupied by the tribals in those villages. Re-survey started in 1990 jointly by Revenue, Forest and Mining Departments and was completed and the report was made on August 2, 1990. Though 14 villages with five enclosures were notified as Borra reserved forest in GOMs No. 2997 F & A dated october 31, 1966, they stood excluded from reserved forest area. Therefore, the lands in the enclosures being cultivated by the tribals are their patta lands and are entitled to get pattas by the concerned officers. It is conceded on behalf of the respondents that the Government have no power to grant mining leases for these lands situated within the enclosures.

WHETHER LEASES ARE IN VIOLATION OF F.C. ACT OR E.P. ACT

120. In the counter-affidavit filed on behalf of the Government, it is conceded that major part of the lands to which mining leases were granted are situated in reserved forest.

It has already been held that transfer of lands situated within scheduled area to non-tribals is void. It is stated that a part of the land covered by some mining leases is outside the reserved forest. The question, therefore, arises: whether these areas are forest? A controversy has been raised by the respondents that unless the lands are declared either as a reserved forest or forest under the Andhra Pradesh Forest Act, 1967, the F.C. Act has no application. Thereby, there is no prohibition to grant mining lease or renewal thereof by the State Government. The need for prior approval of the Central Government is not, therefore, necessary. Prior to the Andhra Pradesh Forest Act, 1967, the Madras Forest Act, 1882 was in force. For declaration of reserved forest for the purpose of the Central Forest Act or a State Act, the set scheme has been devised, namely, publication in the State Gazette constituting any land as a reserved forest specifying its situation, its limits and a declaration constituting such land as reserved forest. A Forest Settlement Officer gets appointed to consider the objections, if any, from the persons claiming any right, title and interest in any land covered by the notification. Pending consideration thereof, provisions exist in the respective Acts prohibiting clearance of the forest or deforestation of the forest or depletion of forest wealth and resultant consequences. After consideration of objections, if any, and rejection of the objections and claims, subject to preserving the easementary right of way, water course or use of water or right to pastures or right to forest produce, the Forest Settlement Officer would determine the right of parties and would direct the concerned department to pay compensation determined on the basis of the principles laid in the Act with a right of appeal thereon. Thereafter, a declaration would duly be published in the Gazette with fixed boundaries that the "aforesaid area are a reserve forest". Similar is the provision and procedure in the Wild Life Sanctuary under Wild Life (Protection) Act, 1972. Therein too, provisions have been made declaring them as sanctuary for preservation and protection of wild life etc. However, the right to residence and right to collect forest produce, forest goods or agriculture etc. to the tribals is regulated under the appropriate provisions.

121. The words 'forest' or 'forest land' have not been defined in the A.P. Act or the Central Forest Act. In Collins English Dictionary (1979 Edn.) the word 'forest' has been defined at page 568 as "a large wooded area having a thick growth of trees and plants, the trees of such an area, something resembling a large wooded area especially in density". Shorter Oxford English Dictionary defines 'forest' as "an extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture". In Webster's comprehensive Dictionary (International Edn.) at page 495, 'forest' has been defined as "a large tract of land covered with a natural growth of trees and underbrush, in English Law wild land generally belonging to the crown and kept for the protection of game, Of, pertaining to, or inhabiting woods or forest. To overspread or plant with trees; make a forest of". The 'forest cover' means "The sum total of vegetation in a forest; more especially, herbs, shrubs and the litter of leaves, branches". 'Forest reserve' for the different manners ' a tract of forest land set aside by Government order for protection and cultivation". According to Stroud's Judicial Dictionary (fifth ed.), Vol. 2, at page 1014 'forest' means "a place privileged by royal authority or by prescription for the peaceable abiding and nourishment of the beasts or birds of the forest, for resort of the King; a subject may hold a forest by grant from the Crown; by the grant of a forest in a man's own ground, not only the privilege but the land itself passes; within the bounds and within the regard". Black's law Dictionary (6th Edn.) defines 'forest' at page 649 as 'A tract of land covered with trees and one usually of considerable extent". Chambers's Twentieth Century Dictionary defines the expression forest at page 415 as 'a large uncultivated tract of land covered with trees and underwood: woody ground and rude pasture".

122. It would thus be seen that 'forest' bears extended meaning of a tract of land covered with trees, shrubs, vegetation and undergrowth inter-mingled with trees with pastures, be it of natural growth or man-made forestation. The FC Act, as amended by 1988 Act was enacted to check deforestation and conservation of forest. Sub-section (2) with a *non obstante* clause on deforestation of forest or use of forest land for non- forest purposes; regulates the forest and provides that notwithstanding any other law for the time being in force in the State, no State Government or other authority shall make, except with prior approval of the Central Government, (i) any order directing that any reserved forest or any portion thereof shall cease to be a reserved forest, (ii) that any forest land or portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned, by way of lease or otherwise, to any private person or to any authority or corporation, agency or any other organisation, not owned, managed or controlled by the Government, (iv) that any forest land or any portion thereof may be cleared or trees which have grown natural in the land or portion for the purpose of using it for reforestation. Clauses (iii) and (iv) were added by Amendment Act 69 of 1988 w.e.f. December 19, 1988. The explanation thereto of non-forest purpose was defined to mean the breaking up or clearing of any forest land or portion thereof for the cultivation of... but does not include any work relating to ancillary to conservation development and management of forest and wild life, namely, establishment of check-posts, fire lines.... or other like purposes. Section 2, therefore, prohibits de-reservation of the forest or use of any forest land for any non-forest purpose or assignment by way of lease or otherwise of any portion of land to any private person other than Government controlled or owned, organised or managed by the State Government agency; it prohibits clearance of trees or natural growth in the forest land or any portion thereof to use it for reforestation, except for preservation. Breaking up or clearance of forest land or a portion thereof is amplified to be of non-forest purpose. The object of the F.C. Act is to prevent any further deforestation which causes ecological imbalance and leads to environmental degradation. It is, therefore, necessary for the State Government to obtain prior permission of the Central Government for (1) de-reservation of forest; and (2) the use of forest land for non-forest purpose. The prior approval of the Central Government, therefore, is a condition precedent for such permission. The State Governments are enjoined by FC Act, with power coupled with duty, to obtain prior approval of the Central Government. The leases/renewal of leases otherwise are good.

123. The Environment (Protection) Act, 1986 (for short, the 'EP Act)' was enacted to protect and improve environment and prevention of hazards to human beings, other living creatures, lands and property. Section 3 of EP Act enjoins the Central Government that it should take such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. It would, therefore, be clear that the meaning of the expression 'forest land' in the respective Acts requires extended meaning given so as to preserve forest land from deforestation to maintain ecology and to prevent environmental degradation and hazardous effects on right to life. In *Virender Gaur & Ors. vs. State of Haryana & Ors.* [(1995) 2 SCC 577] this Court in paragraph 7 at pages 580-81 has held that environmental, ecological, air, water pollution, etc. should be regarded as amounting to violation of right to life assured by Article 21. Hygienic and environment are an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promotion of environmental protection implies maintenance of eco-friendly environment as a whole comprising of man-made and the natural environment. It is, therefore, the duty of every citizen and industry to conserve, and if it becomes inevitable to disturb its existence, it is concomitant duty to reforest and restore forestation; duty of the State to coordinate with all concerned and should ensure adequate measures to promote, protect and improve both man-made, natural environment floura and founa as well as bio-diversity.

124. In *Rural Litigation and Entitlement Kendra vs. State of U.P.* [1989 Supp. (1) SCC 504] in paragraph 14, this Court had observed that consciousness regarding environmental upkeep and cognizance of ecological importance had in recent times entered into governmental activities. The EP Act protects to upkeep forest land or reserved forest, prevents deforestation, encourages forestation and takes steps as are necessary to preserve ecology. In paragraph 23, it was held that mining activity was held uncongenial to ecology and environment. Trees are friends of mankind and forests are inevitable necessity for human existence, healthy living and the civilisation to thrive and florish. The need of protection and preservation of forests is fundamental duty of every citizen and all persons in comprehensive sense, i.e., juristic as well. The problem of forest preservation and protection was no more to be separated from the life style of tribals. The approach required is shift from the dependence on law and executive implementation to dependence on the conscious and voluntary participation of all persons. Maintenance of ecology is the primary duty of the State to prevent any further degradation of the ecology and environment and equally is the duty of every citizen. All persons conjointly should allow regeneration of forest as an essential step for healthy life. This Court in *Chhetriya Pardushan Mukti Sangarsh Samiti v. State of U.P. & Ors.* [(1990 (4) SCC 449] and *Subhash Kumar v. State of Bihar & Ors.* [(1991) 1 SCC 598], had held that the protection to environment is the duty of the State. In *Sachidanand Pandey vs. State of West Bengal* [(1987) 2 SCC 295], it was held that it is the fundamental duty of every citizen under Article 51A(g) and Article 48A of the Constitution to protect the forest and environment. The same view was reiterated in *State of Bihar v. Murad Ali Khan & Ors.* [(1988) 4 SCC 655] and *M.C. Mehra v. Union of India & Ors.* [(1992) 1 SCC 358]. On the positive obligation to protect environment, this Court had emphasised it in *M.C. Mehra's* case (supra) and *Indian Council for Enviro-Legal Action v. Union of India & Ors.* [(1995) 3 SCC 77]. Industries which created environment inimical to the human existence, were directed to be disclosed in *Rural Litigation and Engitlement Kendra v. State of U.P.* [(1989) Supp. 1 SCC 504], *Tarun Bharat Singh, Alwar v. Union of India & Ors.* [(1992) Supp. 2 SCC 448], *Vellore Citizens' Welfare Forum v. Union of India & Ors.* [(1996) 5 SCC 647] and *Indian Council for Anviro-Legal Action* case (supra). In particular, in *Vellore Citizens case,* this Court had pointed out that the sustainable development consists in preservation of the present without compromising the ability of the future generation to meet their needs. Sustainable development is a balancing concept between ecological development and industrialisation. Therefore, with a view to improve the quality of human life, while living within the carrying capacity of the subordinate ecology system, sustainable development should be maintained by the industry and the State should ensure environmental protection and prevent degradation thereof. As a facet thereof, as the principle of "the polluter pays", this Court awarded damages for causing deforestation and directed development of eco-friendly environment.

125. Mining operations, though detrimental to forest growth, are part of layout of the industry; provision should be made for investment or infrastructural planning to reforest the area; and to protect environment and regenerate forest. The Ministry of Environment and Forests and all Secretaries of all the State Governments holding charge of Forest Departments, have a duty to prevent mining operations affecting the forest. It is significant to note that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human consistency nor a source to destroy flora and founa and biodiversity. The provisions of the FC Act get attracted to ensure preservation of forest. In *Garwal case*, this Court, prohibited mining operations. In *Rural Litigation and Entitlement Kendra vs. State of U.P. & Ors.* [1989 Supp. (1) SCC 537] and *State of H.P. & Ors. vs. Ganesh Wood Products & Ors.* [(1995) 6 SCC 363] it expressed anxiety to ensure eco-friendly environment. In the later case, two Judges Bench applied provisions of EC Act and EP Act and held that the application of sustainable development requires that appropriate assessment should be made of the forest wealth and the establishment of industries based on forest produce; other working should also be monitored closely to maintain the required ecological balance. No distinction can be made between the Government forest and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology. The same view was taken by Andhra Pradesh High Court in *M/s. Colorock Pvt. Ltd. Vijayawada vs. The Director of Mines & Geology, Government of A.P.* [(1983 3 ALT 39], *M/s. Anupama Minerals vs. Union of India & Ors.* [AIR 1986 AP 225]; *M/s. Yashwant Stone Works vs. State of U.P.* [AIR 1988 All 121]; *Upendra Jha vs. State of Bihar* [AIR 1988 Patna 263]; and *Ambalal Manibhai Patel & Ors. vs. State of Gujarat* [(1986) 27(2) Guj. LR 1073.

126. it is well settled law that mining operation is a non-forest purpose. In *Ambika Quarry Works & Anr. vs. State of Gujarat & Ors.* [(1987) 1 SCR 562], a Bench of three Judges of this Court had held that the renewal of a mining lease, without prior approval of the Central Government was in violation of Section 2 of the FC Act. The same view was reiterated in *State of M.P. & Ors. vs. Krishnadas Tikaram* [(1995) Supp. 1 SCC 587] and *Tarun Bharat Sangh. Alwar vs. Union of India &Ors.* [(1993) Supp. 3 SCC 115]. In *Tarun Bharat Sangh's case*, it was, however, held that even for mining operations outside the Tiger Reserved Forest declared as protected area, prior permission of the Central Government was necessary. *State of Bihar vs. Banshi Ram Modi & Ors.* [(1985) Supp. 1 SCR 345], strongly relied on by the Division Bench in *Samatha's case* and learned counsel for the respondents, was overruled by this Court in *Ambika Quarry Works's case*. Therefore, the decision no longer operates as a *ratio decidendi*. The same view was taken by the High Courts in the above judgments. It would, therefore, be mandatory that even renewal of mining leases without prior approval of the Central Government, is void. In *M/s. Victorian Granites case,* sub-lease of the mining leases, even with prior approval and grant by the State Government, was held to be illegal.

127. It is seen from the evidence that the mining leases were granted by the State Government or were transferred and retransferred with the sanction of the State Government from private individuals to juristic persons, the partnership firms or companies. The lands with mining area are situated either in the reserved forest or forest land or within the Scheduled Area. Therefore, all the mining leases or renewals thereof are in violation of the Fifth Schedule. Equally, mining leases/renewals of mining leases by the State Government are in violation of Regulation 3(1)(a) read with Section 3(2) of the Regulation and F.C. Act. Therefore, they are all void.

128. Shri Sudhir Chandra in his written submissions has stated that in respect of the lands leased to the 19th respondent, a sum of Rs. 350 crores has been invested for manufacturing of "High Purity Sea Water" magnified by using 100% import high technology. The said product saves annually 70 crores of foreign exchange. It is essential for modernisation of steel industry. The product also has wide application for major core industry saving large foreign exchange for the country. He has also stated that the mining operations are carried on in plain area only and thereby forest area is not affected. However, since these averments have been made for the first time in the written submissions, after Court reserved its decision, we are deprived of the advantage of having the response of the State Government, which in fact, has not taken any active interest in this litigation. We, therefore, feel it necessary that the Chief Secretary of the Andhra Pradesh State should constitute a committee consisting of himself, Secretary (Industry), Secretary (Forest), Secretary (Tribal Welfare/Social Welfare) to have the factual information collected and consider whether it is feasible to permit the industry to carry on mining operations. If the Committee so opines, the matter may be placed before a Cabinet sub-Committee consisting of Minister, Minister for Industries, Minister for Forests and Minister of Tribal Welfare to examine the issue whether licences could be allowed to continue until they expire by efflux of time or whether it is expedient to prohibit further mining operations in the light of Section 11(5) of the Mining Act, to take appropriate action in that behalf and submit report to this Court on the actions so taken.

129. In cases where the similar Acts in other States do not totally prohibit grant of mining leases of the lands in the Scheduled Area, similar Committee of Secretaries and State Cabinet sub-Committees should be constituted and decision taken thereafter.

130. Before granting leases, it would be obligatory for the State Government to obtain concurrence of the Central Government which would, for this purpose, constitute a sub-Committee consisting of the Prime Minister of India, Union Minister for Welfare, Union Minister for Environment so that the State's policy would be consistent with the policy of the nation as a whole.

131. It would also be open to the appropriate legislature, preferably after a thorough debate/conference of all the Chief Ministers, Ministers holding the concerned Ministry and the Prime Minister and the Central Ministers concerned, to take a policy decision so as to bring about a suitable enactment in the light of the guidelines laid down above so that there would emerge a consistent scheme throughout the country, in respect of the tribal lands under which national wealth in the form of minerals, is located.

132. The State Government, therefore, is directed to ensure that all concerned industrialists, be they natural or juristic person stop forthwith mining operations within the scheduled area, except where the lease has been granted to the State Undertaking, i.e., A.P.S.M.D. Corporation; they should report compliance of this order to the Registry of this Court within six months of the receipt of this judgment. The lessees of mining leases are directed not to break fresh mines; however, in the meanwhile, they are entitled to remove the minerals already extracted and stocked in the reserved forest area within four months time from today. All concerned authorities are directed to ensure compliance thereof. Even the State Undertaking carrying the mining operations, would be subject to the regulations under the FC Act and EP Act. It would be open to the State Government to organise Co-operative Societies composed solely of the Scheduled Tribes to exploit mining operations within the Scheduled Area subject to the compliance of the FC Act and EP Act.

133. The appeals of Samatha are accordingly allowed. The judgment of the High Court stands set aside and directions are issued accordingly.

134. The appeal of Hyderabad Abrasives and Minerals (P) Ltd. stands dismissed since their licence has already expired by efflux of time and grant of renewal is prohibited under F.C. Act and Section 11(5) of the Mining Act. No costs.

S. Saghir Ahmad, J.— Leave granted.

136. I have had the advantage of going through the Judgments prepared separately by Esteemed Brothers Ramaswamy and Pattanaik. I am inclined to agree with Brother Ramaswamy, for the reasons which I am presently setting out hereinbelow.

137. Tribals were the first settlers in this country but they were gradually pushed back to the forests and hills by subsequent settlers who were non-tribals. The forests and hills provided a natural barrier and isolated the tribals from people living on the plains. On account of their isolation, they remained illiterate, uneducated, unsophisticated, poor and destitute and developed their own society where they allowed themselves to be governed by their own primitive and customary laws and rituals.

138. Successive governments who ruled India from medieval times to modern times (British Period) allowed these tribals and aboriginals to live in complete isolation and allowed them to follow their own traditional culture, social customs and animistic tribal faiths. There were many dangers in subjecting them to normal laws and they were, therefore, governed by special laws.

139. The Tribal Areas or Agency Areas of the Madras Presidency were governed by Ganjam and Vizagapatnam Act of 1839. Then came the Scheduled Districts Act 14 of 1874 which was followed by the Agency Tracts and Land Transfer Act, 1 of 1917. Section 4(1) and (2) of this Act provided as under:-

> "4(1). Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency Tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.
>
> (2) Where a transfer of property is made in contravention of sub-section (1), the Agent or any other prescribed Officer may on application by any one interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs."

140. Under the Government of India Act, 1935, the administration of the Scheduled

Districts was exclusively vested in the Governor of the Province. Sub-section (1) and (2) of Section 92 of the Government of India Act, 1935 provided as under:-

> "92.(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Dominion Legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.
>
> (2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Dominion Legislature, or of the Provincial Legislature, or any existing Indian Law, which is for the time being applicable to the area in question. Regulations made under this sub-section shall be submitted forthwith to the Governor-General and until assented to by him shall have no effect.

141. In B. Shiva Rao's Study Volume of "The Framing of India's Constitution" it is stated as under:

> "There were two dangers to which subjection to normal laws would have specially exposed these people, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population. and the occupation of the tribals was for the most part agricultural; and, secondly, they were likely to get into the "wiles of the moneylender". The primary aim of government policy was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applieable to these backward areas. At first individual laws were enacted, applicable to particular areas, which, among other thins, prescribed simple and elastic forms of judicial administrative procedures. The Scheduled Districts Act,enacted in 1874, appears to have been the first measure adopted to deal with these areas as a class. That Act enabled the executive to extend any enactment in force in any part of British India to a "scheduled district" with such modifications as might be considered necessary. In other words, the executive had power to exclude these areas from the normal operation of ordinary law and give them such protection as they might need.
>
> The Montagu-Chelmsford Report of 1918 contained a brief reference to these areas: it suggested that the political reforms contemplated for the rest of India could not apply to these backward areas where the people were primitive and "there was no material on which to found political institutions". The typically backward tracts were therefore to be excluded from the jurisdiction of the reformed Provincial Governments and administered personally by the heads of the Provinces. In the Government of India Act of 1919 these tracts were divided into two categories. Some areas were considered so backward that they were wholly excluded from the scope of the reforms. The effect of this was that neither the Central nor the Principal Legislature had power to make laws

applicable to these areas and the power of legislation was vested in the Governor acting with his Executive Council, the Ministers being excluded from having any share in the responsibility for the administration of these areas. Proposals for expenditure in these tracts were not required to be submitted to the vote of the Legislative Assembly: and no question could be asked and no subject relating to any of these tracts could be discussed in the Assembly without the Governor's sanction."

142. It is further stated as under:-

"The object of Government policy in relation to these areas, inhabited by backward, tribal and aboriginal populations, was clearly visualized by the Simon Commission. Until then the aim had primarily been to give the primitive inhabitants of these areas security of land tenure, freedom in the pursuit of their traditional means of livelihood, and a reasonable exercise of their ancestral customs : not self-determination or rapid political advance, but experienced and sympathetic handling and protection from economic subjugation by their neighbours. The Commission realized that perpetual isolation from the main currents of progress would not be a satisfactory long-term solution : and that it would be necessary to educate these people ultimately to become self-reliant. In this direction practically nothing had been achieved. The Commission observed :

> The responsibility of Parliament for the backward tracts will not be discharged merely by securing to them protection from exploitation and by preventing those outbreaks which have from time to time occurred within their borders. The principal duty of the administration is to educate these peoples to stand on their own feet, and this is a process which has scarcely begun.

The Commission recognized this problem to be one of considerable magnitude and complexity. On the one hand it was too large a task to be left to the efforts of missionary societies and individual officials, since coordination of activity and adequate funds were required. On the other hand, the typically backward tract was deficit area and "no provincial legislature (was) likely to possess either the will or the means to devote special attention to its particular requirements". In these circumstances the Commission recommended that the responsibility for the backward classes would be adequately discharged only if it was entrusted to the Centre. It was recognized that it would not be a practicable arrangement if centralization of administrative authority in these areas led to a situation in which these areas would be separated from the Provinces of which they were an integral part: and in order to meet this difficulty the Commission suggested that even though there would be a central responsibility, the backward tracts should not be separated from the Provinces but that the Central Government should use the Governors as degree of backwardness, it could be laid down by rules how far the Governor would act in consultation with his Ministers in the discharge of these agency duties.

The proposal for centralizing the administration of these areas was however not adopted in the constitutional reforms of 1935. Under the Government of India Act of 1935, these backward areas were classified as excluded areas and partially excluded areas. A small number of excluded areas-the total extent of these was about 18,600 square miles in Assam and 10,000 square miles in the rest of India-in the Provinces of Madras, Bengal, the North-West Frontier Prinvince, the Punjab and Assam, were placed under the personal rule of the Governor acting in this discretion: and while partially excluded areas were within the field of ministerial responsibility, the Governors exercised a special responsibility in respect of the administration of these areas; and they had the power in their individual judgment to overrule their Ministers if they thought fit to do so. No Act of the Federal or Provincial Legislature would apply to any of these areas : but the Governors had the authority to apply such Acts with such modifications as they considered necessary.

In addition to these excluded and partially excluded areas, which were defined in the Government of India Act, 1935, as "areas along the frontiers of India or in Balunchistan which are not part of British India or of Burma or of any India State or of any foreign State". The position of these areas was even more peculiar. In terms of the definition they did not form part of the territory of British India and neither the Parliament of Britain nor the Legislatures of British India claimed or exercised any direct legislative powers over these areas. The powers exercisable in these areas were described as arising out of "treaty, grant, usage, sufferance or otherwise' and the Act of 1935 contained a specific authorization enabling these powers to be exercised as part of the executive authority of the Central Government, by the Governor-General acting in his discretion, and therefore outside the area of responsibility of the Ministry."

143. It is further stated as under:-

"The Cabinet Mission's statement of May 16, 1946, mentioned the excluded and partially excluded areas and the tribal areas as requiring the special attention of the Constituent Assembly. The Advisory Committee on Fundamental Rights and Minorities, to be set up at the preliminary meeting of the Assembly, was to contain due representation of all the interests affected; and one of its functions was to report to the Constituent Assembly on a scheme for the administration of tribal and excluded areas at its meeting on February 27, 1947, the Advisory Committee set up three sub-committees - one to consider the tribal and excluded and partially excluded areas in Assam: one to consider the tribal areas in the North-West Frontier Province and Baluchistan: and the third sub-committee to consider the position of excluded and partially excluded areas in the Provinces other than Assam."

144. The Sub-Committee on Assam submitted its report on 28th July, 1947 while the other Sub-Committee on the Excluded and Partially Excluded Areas other than Assam submitted its interim report on 18.8.1947 and final report in September, 1947. The Joint meeting of the two Sub-Committees was held in August, 1947. The Joint meeting summed up the problems as under:-

"The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult of access, highly malaria and infected also in some cases by other diseases like laws and venerease disease and locking in such citilizing facilities as loads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are expited with ease by plainsfolk, resulting in the passage of land formerly cultivated by them to money-lenders and other erstwhile on-agriculturists. While a good number of regulations and even harmful practices are prevalent among them, the tribes have thus own customs and way of life with institutions like tribal and village panchayats councils which are very effective smoothing village administration. The sudden disruption of the tribals' customs and ways exposure to the impact of a more complicate and sophisticated manner of life is capable doing great harm. Considering past experience and the strong temptation to take advantage on the tribals' simplicity and weaknesses, it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value".

145. It would be useful at this stage to reproduce further the two passages from Shri Rao's Book relating to the recommendations:-

> "From the beginning the objectives of the Government's policy in regard to the tribes and tribal areas were primarily directed to the preservation of their social customs from sudden erosion and to safeguarding their traditional vocations without the danger of their being pauperized by exploitation by the more sophisticated elements of the population. At the same time it was recognized that this stage of isolation could not last indefinitely : a second and major objective was therefore laid down, that their educational level and standard of living should be raised in order that they might in course of time be assimilated with the rest of the population. From this point of view the sub-committee was of the opinion that the policy of exclusion and partial exclusion had not yielded much tangible result in the progress of the aboriginal areas towards the removal of their backward condition or in their economic and educational betterment. The sub-committee did not therefore find it advisable to abolish the administrative distinction between the backward areas and the rest of the country; and it recommended that while certain areas like Sambalpur and Angul in Orissa need no longer be treated differently from the regularly administered areas, there were other areas which needed a simplified type of administration to protect the aboriginal people from exposure to the complicated machinery of the ordinary law courts and save them from the clutches of the moneylender who took advantage of their simplicity and illiteracy, deprived them of their agricultural land, and reduced them to a state of virtual serfdom. The general position, according to the sub-committee, was that the areas predominantly inhabited by tribal people should be known as "Scheduled Areas" (the intention being that these areas should figure in a schedule to a notification) and special administrative arrangements made in regard to them.
>
> At the same time, having found the treatment of exclusion and partial exclusion to have proved a failure, the sub-committee recommended that the responsibility for the betterment and welfare of these areas should be squarely that of the Provincial Governments and that accordingly the Governors should not have any special reserved or discretionary powers in regard to these areas. But the ultimate responsibility was to be that of the Centre, both for drawing up plans for the betterment of these areas and for

providing the necessary finances. In order to ensure that the requirements of these areas were given full consideration, the sub-committee recommended that the Constitution should provide for the setting up in each Province of a body which would keep the Provincial Government constantly in touch with the needs of the aboriginal tracts in particular and with the welfare of the tribes in general. This body was to be known as a Tribes Advisory Council, which it was proposed should have a strong representation of the tribal element.

The Tribes Advisory Council would primarily advise the government in regard to the application of laws to the Scheduled Areas : no laws affecting the following matters would apply if the Tribal Advisory Council considered such a law unsuitable:

(1) Social matters ; (2) occupation of land, including tenancy laws, allotment of land and setting apart of land for village purposes; (3) village management, including the establishment of village panchayats.

The provisions for the other States were more detailed. In their case, the advisory body was known as the Tribes Advisory Council. The membership of the Tribes Advisory Council in each of the States was to be between ten and twenty-five, of whom three-fourths were to be elected representatives of the Scheduled Tribes in the Legislative Assembly of the State as in the case of the Punjab and the United Provinces; it was laid down as the duty of the Tribes Advisory Council generally to advise the Government on all matters pertaining to the administration of the Scheduled Areas and the welfare of the tribes. The State Government was statutorily enjoined to give effect to the advice of the council if it considered that an Act, whether of Parliament or of the State Legislature, relating to the following matters, was unsuitable for, or required modification in, its application to a Scheduled Areas:

> (a) marriage; (b) inheritance of property; (c) social customs of tribes; (d) land, including rights of tenants, allotment of land and reservation for any purpose; (e) village administration and village panchayats.

It was made obligatory that the Governor should act according to the advice of the Tribes Advisory Council on the application of Acts relating to these matters. He was not bound to accept the advice of the council on laws relating to other matters. The State Government was also empowered to make regulations applicable to a Scheduled Area after consulting the council. As in the case of East Punjab and the United Provinces, such regulations would make provision for the trial of offences other than those punishable with death, transportation for life or imprisonment for five years or more; such regulations could also provide for the trial of disputes "other than those arising out of any such laws as may be defined in such regulations".

The transfer of land in a Scheduled Area from a tribal to a non-tribal was forbidden; and the State Government was also prohibited from allotting State land in a Scheduled Area to non-tribals except in accordance with rules made after consulting the Tribes Advisory Council. Likewise, if advised by the council, the Governor was obliged to license moneylending, prescribing such conditions as were considered necessary; and the breach of these conditions would be an offence. In order that public attention might be focused on the

> development work carried out in these areas, the State Government was required to show separately in its annual financial statement the revenues and expenditure pertaining to these areas."

146. The Sub-Committee in its report with regard to the land in Tribal (Scheduled) Area, provided as under:-

> "25. Land : The importance of protection for the land of the tribals has been emphasized earlier. All tenancy legislation which has been passed hitherto with a view to protecting the aboriginal has tended to prohibit the alienation of the tribal's land to non-tribals. Alienation of any kind, even to other tribals, may have to be prohibited or severely restricted according to the different stages of advancement. We find however that Provincial Governments are generally alive to this question and that protective laws exist. We assume that these will continue to apply and as we have made special provision to see that land laws are not altered to the disadvantage of the tribal in future, we do not consider additional restrictions necessary. As regards the allotment of new land for cultivation or residence, however, we are of the view that the interests of the tribal need, to be safeguarded in view of the increasing pressure on land everywhere. We have provided accordingly that the allotment of vacant land, belonging to the State in Scheduled Areas should not be made except in accordance with special regulations made by the Government on the advice of the Tribes Advisory Council."

147. In Part-II of Appendix C to this report, it was indicated as under:-

> "Vacant land in a Scheduled Area which is the property of the State shall not be allotted to a non-tribal except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council."

148. The recommendations of the two Sub-Committees were not considered by the Constituent Assembly in its Session in July, 1947, when the broad principles of the Constitution were settled since, as explained by Dr. Ambedkar, they were received too late. The Drafting Committee however, considered these proposals at the stage of drafting and suitable provisions including Schedule V & VI were included in the Draft Constitution of February, 1948 in which it was indicated that the transfer of land in Scheduled Area from Tribal to Non-Tribal was forbidden; and the State Government was also prohibited from allotting the State land in the Scheduled Area to Non-Tribal except in accordance with the Rules which may be made by the Governor after consulting the Tribes Advisory Council.

149. The Draft Fifth Schedule prepared by the Drafting Committee with regard to Article 189(a) and 190(1) which related to the administration and control of Scheduled Areas and Scheduled Tribes consisted of several parts. Part I contained the general provision that the executive power of a State specified in Part I of the First Schedule shall extend to the Scheduled Areas therein. It further provided that the Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the Government of India, may report to the Government regarding the administration of the Scheduled Areas and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

150. Part II applied to the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa. Clause 5 specified the laws applicable to Scheduled Areas in those States. It provided as under:-

> "5. Law applicable to scheduled areas:

(1) The Governor may, if so advised by the Tribes Advisory Council for the State, by public notification direct that any particular Act of Parliament or of the legislature of the State shall not apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may with the approval of the said Council specify in the notification.

Provided that where such Act relates to any of the following subjects, that is to say-

(a) marriage;

(b) inheritance of property;

(c) social customs of the tribes:

(d) land, other than lands which are reserved forest under the Indian Forest Act, 1927 or under any other law for the time being in force in the area in question, including rights of tenants, allotment of land and reservation of land for any purpose;

(e) any matter relating to village administration including the establishment of village panchayats;

the Governor shall issue such direction when so advised by the Tribes Advisory Council.

(2) The Governor may, after consultation with the Tribes Advisory Council for the State, make regulations for any scheduled area in the State with respect to any matter not provided for by any law for the time being in force in such area.

(3) The Governor may also make regulations for any scheduled area in the State with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards or relating to disputes other than those arising out of any such laws as may be defined in such regulations, and may by such regulations empower the headmen or panchayats in any such area to try such cases.

(4) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution."

151. Clause 6 which dealt with the alienation and allotment of land to Non-Tribals in Scheduled Areas provides as under:

"6. Alienation and allotment of lands to non-tribals in scheduled areas: (1) it shall not be lawful for a member of the Scheduled Tribes to transfer any land in a scheduled area to any person who is not a member of the Scheduled Tribes;

(2) No land in a scheduled area vested in the State within which such area is situate shall be allotted to, or settled with, any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council for the State."

152. Part III was applicable to the State of United Provinces (now known as Uttar Pradesh). Para 12 provided as under:

"(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution."

153. Part IV related to the State of East

Punjab. Clause 17 provided as under:-

> "(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.
>
> (3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution."

154. The important provision to be noticed is that although in respect of States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa, a total ban was placed on the transfer of land by a member of the Scheduled Tribe to a person who is not a member of the Scheduled Tribe, it was provided, so far as allotment of Government land was concerned, that no land in a Scheduled Area could be allotted to or settled with a Non-Tribal except in accordance with the rules made in that behalf by the Governor after consulting the Tribes Advisory Council. This indicated that if a rule was made by the Governor in that regard, land in a Scheduled Area which was vested in the Government, could be allotted to the Non-Tribal. It is obvious that the power of allotment could not be exercised so long as the rules were not made.

155. No provision, so far as allotment of Government land was concerned, was made for the State of United Provinces and West Bengal for which the only provision made was that the Governor may make regulations so as to prohibit the transfer of land in a Scheduled Area by a member of the Scheduled Tribe to any person who is not a member of the Scheduled Tribe.

156. It also requires to be noticed that the Regulations made by the Governor for all these States to which Schedule Fifth was applicable were to have the same force and effect as an Act of the appropriate Legislature. But this was not stated in respect of rules which could be made by the Governor under Clause 6(2) of the Fifth Schedule applicable to State of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa.

157. The comments and suggestions made on the Draft Constitution including the Fifth Schedule prepared by the Drafting Committee, so far as relevant paras, namely, Para 5, Para 6, Para 12 and Para 17 of the Fifth Schedule, are concerned, and the decision of the Drafting Committee thereon are quoted below:-

> "PARAGRAPH 5
>
> The Government of Orissa has questioned the propriety of the provisions contained in sub-paragraph (1) of paragraph 5 in Part II of the Fifth Schedule and has made the following comments:
>
>> Under Section 92(1) of the Government of India Act, 1935 no Act of the Federal or Provincial Legislature applies to a partially excluded area unless the appropriate Provincial Government so directs by a notification. The plan followed in the Draft Constitution of India is, however, fundamentally different. The idea underlying paragraph 5(1) of Part II of the Fifth Schedule to the Draft Constitution is that as soon as an Act of the Federal or the Provincial Legislature is passed, it will apply automatically to all Scheduled Areas unless the Governor on the advice of the tribes Advisory Council directs, in respect of any particular legislation, either that it shall not apply to any specified

Scheduled Areas or that it shall apply to such areas, subject to specified exceptions and modifications. Although on the whole the Government of Orissa prefer the plan indicated in para 5(1) of Part II of the Fifth Schedule to the Draft Constitution to the provision of section 92(1) of the Government of India Act, 1935, they apprehend that difficulties, mainly of an administrative nature, might arise out of the inevitable time lag between the passing of an Act by either the Dominion or the State Legislature and the decision of the Governor either that the Act shall not apply to any Scheduled Area or that in its application to such an area, it shall be subject to certain modifications and exceptions. Since the position will be that as soon as an Act is passed by a Legislature it will apply in all Scheduled Areas, certain rights and obligations will be created or modified by virtue of the Act. The accrual of such rights and obligations in the interim period might give rise to an awkward situation if it is decided subsequently (and a direction is made to that effect) either that the Act shall not apply to Scheduled Areas or that it shall apply to such areas subject to certain specified exceptions and modifications. It is of course possible to give retrospective effect to the directions made under para 5(1) in order to secure that the exceptions and modifications subject to which the Act is applied to Scheduled Areas will have effect therein from the date of the passing the Act. If that is done, consequential provisions will have to be inserted by way of 'modifications' in order to regularize anything done under the Act during the interim period. Even so, however, it is likely that the rights of several parties might be seriously affected and there might be much confusion. The Provincial Government, however, see no easy solution of such difficulties if the plan envisaged in para 5(1) of Part II of the Fifth Schedule is adhered to.

Note: The provisions of sub-paragraph (1) of paragraph 5 of the Fifth Schedule are based on the recommendation of the Sub-Committee on Excluded and Partially Excluded Areas (Other than Assam) as adopted by the Advisory Committee. Attention is invited in this connection to paragraphs 10 and 11 of Volume I [Report of the Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee]. It will appear from the said report that the present system under which the Governor in this discretion applies the legislation did not appeal to the committee as this principle would be regarded as undemocratic even though the Governor in future might be an elected functionary. The criticism offered by the Government of Orissa to the provision set out in sub-paragraph (1) of paragraph 5 will also apply if the present provisions of the Government of India Act, 1935, under which no Act of the Central or a Provincial Legislature applies to an excluded or a partially excluded area unless the Governor by a public notification so directs, is adopted; for, if in such case it is essential that an Act of the Central or a Provincial legislature should apply to any such area along with other areas on the date when it becomes law after it has been assented to, there is bound to be some time lag between the passing of the Act and the decision of the Governor that the Act shall apply to such area or that in its application to such area it shall be subject to certain modifications and exceptions as in the present case. A decision will have to be arrived at in either case as to the application or non-application of the Act when the Bill is passing through the Legislature and a notification will have to be kept ready for issue on the date the Bill on being assented to becomes law.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to recast the proviso to sub-paragraph (1) of paragraph 5 of Part II of the Fifth Schedule as follows:

> Provided that where such Act relates to any of the following subjects, that is to say;
>
> (a) marriage, inheritance or property for social customs of the Scheduled Tribes:
>
> (b) and (c) (Omit);
>
> (d) land, other than lands which are reserved forests under the Indian Forest Act, 1927, or under any other law for the time being in force in the area in question, including rights of tenants, allotment of land and reservation of land for any purpose;
>
> (e) any matter relating to village administration including the establishment of village panchayats. the Governor shall issue such direction when so advised by the Tribes Advisory Council,

The Government of Orissa has also made the following comments with regard to sub-paragraph (2) of paragraph 5 of Part II of the Fifth Schedule :

> With reference to the Governor's power to make regulations under paragraph 5(2) of Part II of the Fifth Schedule. the question has been raised whether the power is as plenary as the power at present concerned by section 92(2) of the Government of India Act, 1935. A regulation made under Section 92(2) may deal with any subject irrespective of whether it is included in the Central, Provincial or Concurrent List; it may even amend a Central Act. Since, however, sub-paragraph (4) of paragraph 5 of Part II of the fifth Schedule does not specifically refer to the Dominion Parliament, the Provincial Government are doubtful if the power to make regulations conferred by sub-paragraph (2) of paragraph 5 will be equally plenary or will be restricted to matters on which the State Legislature will be competent to legislate. Although the term "appropriate legislature" used in sub-paragraph (4) of paragraph 5 would etymologically include the "Dominion Parliament" as well as "the State Legislature, it appears from a perusal of the Draft Constitution that the draftsman made a distinction between "Parliament" on the one hand and "State Legislature" on the other. It may, therefore, be the intention of the Draft Constitution that the Governor's power to make regulations under sub-paragraph (2) of paragraph 5 will not extend to matters included in the Central List. If that is the plan, the Provincial Government beg to differ from it, as they feel that the Provincial Governor's power to make regulations for the good government of Scheduled Areas should continue to be as plenary as it is at present.

Note: The power to make regulations conferred by sub-paragraph (2) of paragraph 5 is not restricted only to matters on which the State Legislature will be competent to legislate. The expression "with respect to any matter not provided for by any law for the time being in force in such area" in sub-paragraph (2) of paragraph 5 and the use of the expression "appropriate legislature" in sub-paragraph (4) of that paragraph make it clear that the power to make regulations under sub-paragraph (2) of that paragraph is not restricted only to matters with respect to which the Legislature of the State is competent to legislate. Any further clarification is hardly necessary. However, to make the intention clearer the following amendment may be made in paragraph 5 of Part II of the Fifth Schedule:

> In sub-paragraph (2) of paragraph 5 of the Fifth Schedule, the following be added at the end:
>
> and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to substitute the following for sub-paragraph (2) of paragraph 5 of Part II of the Fifth Schedule:

> (2) The Governor may, after consultation with Tribes Advisory Council for the State, make regulations for any Scheduled Area in the State with respect to any matter not provided for by any law for the time being in force in such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area:
>
> Provided that any regulations so made provided that any regulations so made with respect to any matter enumerated in the Union List shall be submitted forthwith to the President and, until assented to by him, shall have no effect."

PARAGRAPH 6

K. Santhanam: That in paragraph 6(1) of Part II of the Fifth Schedule, the following be added at the end:

> Except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council;

Note: Sub-paragraph (1) of paragraph 6 of the Fifth Schedule follows the recommendation of the Excluded Areas Sub-Committee as adopted by the Advisory Committee. But, prima facie, there should be no objection to the amendment : of the wording of sub-paragraph (2).

L.N. Sahu: That a suitable proviso be added to paragraph 6(1) of the Fifth Schedule to permit the making of regulations by. the Provincial Government in order to prohibit the transfer of lands by members of a particular Scheduled Tribe to members of any other Scheduled Tribe.

Note: Paragraph 6 of Part II of the Fifth Schedule follows the recommendation of the Sub-committee on Excluded Areas as adopted by the Advisory Committee. This amendment involves a question of policy. If it is accepted, then it should be redrafted as follows:

> After sub-paragraph (3) of paragraph 5 of the Part II of the Fifth Schedule, the following sub-paragraph be inserted :
>
> (3-A) The Governor may also make regulations so as to prohibit the transfer of any land in a Scheduled

> Area in the State by a member of any Scheduled Tribe to a member of any other Scheduled Tribe.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to recast sub-paragraph (1) of paragraph 6 of Part II of the Fifth Schedule as follows:

> (1) It shall not be lawful for a member of the Scheduled Tribes to transfer any land in a Scheduled Area to any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council.

PARAGRAPH 12

K. Santhanam: That in paragraph 12(2) of Part III of the Fifth Schedule, after the words "so as to prohibit" the words "or regulate" be inserted.

Note: Sub-paragraph (2) of paragraph 12 follows the recommendation of the Excluded Areas Sub-Committee as adopted by the Advisory Committee. This amendment may, however, be accepted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to recast sub-paragraph (2) of paragraph 12 of Part III of the Fifth Schedule as follows :

> (2) The Governor may also make regulations so as to control or prohibit the transfer of any land in a Scheduled Area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

PARAGRAPH 17

K. Santhanam: that in paragraph 17(2) of Part IV of the Fifth Schedule, after the words "so as to prohibit" the words "or regulate" be inserted.

Note: The remarks on the amendment to paragraph 12 above would also apply to this amendment. This amendment may be accepted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to recast sub-paragraph (2) of paragraph 17 of Part IV of the Fifth Schedule as follows:

> (2) The Governor may all *(sic)* regulations so as to control or prohibit the transfer of any land in a Scheduled Area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes."

158. When the Constituent Assembly took up the Fifth Schedule for consideration on 5th September, 1949, Dr. B.R. Ambedkar moved another Draft Fifth Schedule in place of the original Fifth Schedule. This Schedule was simpler in form and uniformly applied to all the Scheduled Areas. Para 5 of new Draft is quoted below:-

> "5. Law Applicable to scheduled areas - (1) Notwithstanding anything contained in this Constitution the Governor or Ruler, as the case may be may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.
>
> (2) The Governor or Ruler, as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.
>
> In particular and without prejudice to the generality of the foregoing power, such regulations may-
>
> (a) prohibit or restrict the transfer of land

> by or among members of the Scheduled Tribes in any such area;
>
> (b) regulate the allotment of land to members of the Scheduled Tribes in such areas;
>
> (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such areas.
>
> (3) In making any regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
>
> (4) All regulations made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.
>
> (5) No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

159. Before the Fifth Schedule was finally adopted by the Constituent Assembly, there was debate in the Assembly on every Clause of the Schedule. It will be useful, at this stage, to reproduce some passages from the Constituent Assembly Debate as under:-

> "[Shri Yudhisthir Mishra]
>
> The special purpose for moving this amendment is that there are areas in Orissa and the C.P. States which may not be specified as scheduled areas but there are certain Scheduled tribes among which certain kinds of land laws are prevalent. For example, in C.P. and Orissa States, it is not permissible on the part of a non-aboriginal to acquire the lands of an aboriginal without the sanction of the Government. Now, Sir, in that case, supposing according to paragraph 5, the Governor or the Ruler of a State does not make any regulation and retains the same provisions applicable to non-aboriginals with respect to the transfer of lands; then I shall submit that there will be no use in saying that the Government is prepared to safeguard the interests of the tribal people."

160. Shri Brajeshwar Prasad suggested as under:-

> "........The provinces being weak in economic resources are not in a position to shoulder the responsibility. Hence I plea that the Centre should take command of the tribal areas. The Government of India has no right to exist if it cannot undertake to guarantee means of livelihood and free educational and medical facilities even for such a small number of people..............
>
> I want, Sir, that no land in the scheduled areas belonging to an Adibasi should be allowed to be sold or mortgaged even to tribals without the permission of the Deputy Commissioner. Such a provision exists in Santhal Pargana. I am not at all in favour of dispossessing those non-tribals who have got lands or property in the scheduled areas, but no further lands should be given to non-tribals. This protection is needed in the interests of the tribals. It is also in consonance with the demands of the tribal leaders. This concession will generate a feeling of loyalty in the hearts of the tribal people.................."

161. Shri Jadubans Sahay Forcefully argued:-

> "..........So far as land is concerned, it is not our intention, nor of the provincial Governments where the tribals have provincial Governments have made laws to see that land should not pass out of the hands of the tribal people; in our

province, the Chota Nagpur Tenancy Act was modified and altered long before 1937 in order to see that no land should pass out of the hands of the tribal people. But, there were various difficulties in the original schedule that land should not be settled by the Government to any one except the tribal people. In the Scheduled areas, there are not only the tribal people; there are Harijans also; there are other castes also who are equally backward, if not otherwise, at least economically, as the tribal people. Is it, then, Sir, our wish that in those areas where the Harijans and other backward people remain, land should not be settled by the Government to them also? Of course, the tribal people should have the preference as well as the Harijans living in those areas. If these things are made elastic, we should have nothing to say on this point. But, the Government should see and in the future we also should see that preference is given to the tribal people and if they have no land, the landless tribal people should have the first priority........ ...."

162. The above portions have been extracted from the Constituent Assembly Debates to indicate the mood of the representatives of the people and the urgency they felt in protecting the land of the tribals and need for prohibiting transfer of land in the Scheduled Areas to non-tribals by the State Government.

163. Para 5(2) of the Fifth Schedule, as finally adopted and engrafted in the Constitution, provided as under:-

"5(2). The Governor or Rajpramukh, as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may-

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the scheduled tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the scheduled tribes in such areas.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

164. The word "Rajpramukh" was subsequently deleted by the Constitution (Seventh Amendment) Act, 1956.

165. The above legislative history indicates that from the very beginning, at least from the 19th Century, Scheduled Areas inhabited by aboriginals and tribals have been administered exclusively under the control of the Central Government through the Governor of the State by providing special statutory measures. It is obvious that from the earliest time till the making of the Constitution, it was all along felt that the transfer of land in the Scheduled Areas by a tribal to a person who was not a member of the Scheduled Tribe be totally prohibited and if such a transfer was made, it was to be treated as null and void. Government land in the Scheduled Areas could also not be allotted to persons who were not the members of the Scheduled Tribes. If such land was proposed to be allotted to them, it could be done only under the regulations made by the Governor. The basic concept was that the land of the Scheduled Tribes should be protected and should not be frittered away by transfer nor should any non-tribal be allowed to infiltrate in the Scheduled Area by getting an allotment of land made in his favour. In case of a transfer of land which was void, the power to restore land to a tribal or his heirs after evicting the non-tribal was also vested in the Government.

166. It has already been seen above that in the Draft Constitution, prepared by the Drafting Committee, there was a clear prohibition on the allotment of Government land to non-tribals except in accordance with the rules made by the Governor.

167. In the Constituent Assembly when the Draft Fifth Schedule was considered, no Member raised any objection that the Government should be free to allot its land to the non-tribals in the Scheduled Areas as all the Members were conscious of the fact that the special privileges and special status enjoyed by the tribals should not be disturbed by allowing non-tribals to enter into that Area.

168. The protective measures adopted through legislation for the preservation of tribal life, for the prevention of exploitation of tribals by non-tribals and money-lenders and to seal infiltration of non-tribals in the Agency tracts or Scheduled Areas rested on three main planks:-

(a) Prohibition of transfer of land by tribal to a non-tribal with the stipulation that such transfer will be null and void.

(b) Prohibiting Government from allotting land vested in it to non-tribal.

(c) Power of Government to evict non-tribal from the tribal's land coming into his possession through a void sale-deed and restoring the same to the tribal or his heirs.

169. The question is whether this position is still reflected in the Fifth Schedule read with Articles 15(4), 46 and 244 of the Constitution.

170. The Fifth Schedule as finally brought on pages of the Constitution does not contain any specific prohibition.

171. After specifying that the executive power of the State extends to the Scheduled Areas therein and that the Governor shall report annually to the President regarding the administration of those area and that the executive power of the Union extends to the giving of direction to the States about the administration of the Scheduled Areas and further that there shall be a Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes as may be referred to them by the Governor, the Fifth Schedule, in Para 5 thereof, proceeds to speak about the applicability of laws to the Scheduled Areas by saying that the Governor may, by Notification, direct that an Act of Parliament or Legislature of the State shall not apply to the Scheduled Area or that it shall apply with such exceptions and modifications as may be specified in the Notification. These directions may also be issued with retrospective effect.

172. Under Para 5(2) of the Fifth Schedule, the Governor has also been given the power to make Regulations for the "Peace and Good Government" of the Scheduled Area.

173. Apart from this power which is in very wide and general terms, Regulations could also be made by the Governor to:-

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

174. The power to make Regulations also includes the power to repeal or amend any Act of Parliament or of the State Legislature or any existing law which may, for the time being, be applicable to the Scheduled Area.

175. The power to make Regulations is undoubtedly legislative in character. The power to issue directions under Para 5(1) of the Fifth Schedule as to the applicability of an Act of Parliament or State Legislature with such exceptions and modifications as the Governor may direct, is also legislative in character. In *Chatturam & Ors. vs. Commissioner of Income Tax, Bihar,* (1947) FCR 116 = (1947) FLJ 92; it was laid down with reference to Section 92(1) of the Government of India Act, 1935 that when the Governor issues a Notification under Section 92(1) by which Federal Laws are applied to Excluded and Partially Excluded areas (Scheduled Areas), he exercised a legislative power. So also when the Governor makes Regulations in exercise of power under Para 5(2) of the Fifth Schedule, which is equivalent to Section 92 of the Government of India Act, 1935 and repeals or amends any Act of Parliament or State Legislature, he exercises legislative power as the principle laid down in *Chhaturam's* case (supra) which was followed in *Jatindra Nath Gupta vs. The Province of Bihar & Ors.,* (1949) FLJ 225, would be applicable to this situation also.

176. The Governor has also been given the legislative power to make Regulations for the "PEACE AND GOOD GOVERNMENT" of any area in a State which is a Scheduled Area. The words "PEACE AND GOOD GOVERNMENT" are the words of very wide import and give wide discretion to the Governor to make laws for such purpose. In *King Emperor v. Benoari Lal Sharma,* (1944) L.R. 72 I.A. 57 and in *Attorney-General for Saskatchewan v. Canadian Pacific Ry. Co.,* (1953) A.C. 594, it was held that the words "PEACE, ORDER AND GOOD GOVERNMENT" have reference to the scope and not to the merits of the legislation. It was again explained in *Girindra Nath Banerjee v. Birendra Nath Pal,* (1927) I.L.R. 54 Cal. 727 that these words are words of the widest significance and if it is not open to a Court to consider whether any legislation made by the Governor would conduce to peace and good Government.

177. The words "PEACE, PROGRESS AND GOOD GOVERNMENT" have also been used in Article 240 of the Constitution which empowers the President to make Regulations for certain Union Territories. This Court had an occasion to consider the significance of these words in *T.M. Kannivan vs. Income-Tax Officer, Pondicherry and Anr.,* (1968) 2 SCR 103 and relying upon the above decisions as also those rendered in *Riel v. The Queen,* (1885) 10 A.C. 675 and *Chenard and Co. & Ors. v. Joachim Arissol,* (1949) A.C. 127, it was held that the power of the President to make Regulations under Article 240 was very wide and the President could make Regulations with respect to a Union Territory occupying the same field on which Parliament could also make laws.

178. In exercise of the power conferred by Para 5(2) of the Fifth Schedule, the Governor of Andhra Pradesh promulgated Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.

179. These Regulations were amended by Regulation I of 1970, again by Regulation I of 1971 and by Regulation I of 1978.

180. The constitutional validity of these Regulations was challenged in *P. Rami Reddy & Ors. vs. State of Andhra Pradesh & Anr.* (1988) 3 SCC 433 and upheld by this Court.

181. Para 3(1)(a) of the Regulation which opens with a non-obstante clause provides that a transfer of immovable property situate in the Agency Tracts by a person, whether or not such a person is a member of the Scheduled Tribes, shall be absolutely null and void. This puts a complete ban on the transfer of immovable properties in the Agency Tracts by any person whatsoever, whether he is a member of the Scheduled Tribe or not. There is, however, one exception to this rule as it is provided that such transfer shall not be null and void if the transfer is made in favour of a person who is a member of the Scheduled Tribe or is a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 which is composed solely of members of the Scheduled Tribes.

182. Para 3(1)(c) provides that if a person "who intends to sell his land, is not able to sell that land either because the member belonging to the Scheduled Tribe is not willing to purchase the land or is not willing to purchase the land on the terms offered to him, such person may apply to the Agent or the Agency Divisional Officer or any other Prescribed Officer (who are defined in Para 2(b) and (c) of the Regulations) for the acquisition of such land by the State Government. The Agent or the Agency Divisional Officer or the Prescribed Officer, as the case may be, shall then take over the land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh (Ceiling on Agricultural Holdings) Act, 1961. The land shall then vest, free from all encumbrances, in the State Government which shall dispose of the land in the favour of members of the Scheduled Tribe or a Co-operative Society composed solely of the members of the Scheduled Tribe or "in such other manner and subject to such conditions as may be prescribed." There cannot also be a "Benami" transaction under the Regulations and a member of the Scheduled Tribe cannot hold property in his name for the benefit of a non-tribal.

183. Para 3(2)(a) provides that if a transfer of immovable property has been made in contravention of Para 3(1)(a), the Agent, the Agency Divisional Officer or any other Prescribed Officer suo motu or on the application of anyone interested or on the information of a public servant, decree ejectment of the person in possession of that property claiming under such transfer. The property shall then be restored to the transferor or his heirs.

184. Para 3(2)(b) provides that if a transferor or his heirs are not willing to take back the property or their whereabouts are not known, the property shall be assigned or sold to any other member of the Scheduled Tribe or a Co-operative Society composed solely of the members of the Scheduled Tribe. The Agent or the Agency Divisional Officer or the Prescribed Officer shall have a power to "otherwise" dispose it of as if it was the property at the disposal of the State Government.

185. It may be mentioned here that Para 3(i)(b) contains a rule of presumption that if any immovable property situated in the Agency Tracts is in possession of a person who is not a member of the Scheduled Tribe, it shall be presumed, until the contrary is proved, that the property has been acquired by that person through a transfer made to him by member of the Scheduled Tribe.

186. Para 3A of the Regulation places two restrictions on a person intending to mortgage his property. The first restriction is that it can be mortgaged only in favour of a person who is a member of the Scheduled Tribe or to a Co-operative Society or a Land Mortgage Bank or any other bank or financial institution approved by the State Government. The Explanation appended to Para 3A(1) defines a "Bank". The other restriction is that while mortgaging the property, it would not be open to that person to deliver possession to the mortgagee. Clause 2 of Para 3A provides that in case the immovable property which was mortgaged is brought to sale on account of default in payment of the mortgage money or the interest payable thereon, the said property shall be sold only to a member of the Scheduled Tribe or to a Co-operative Society composed solely of members of the Scheduled Tribe. Explanation appended to this Clause specifies as to what would be treated as Co-operative Societies. It provides that if the Government is a member of any Co-operative Society, it, namely, the said Society, shall also be deemed to be a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964.

187. Clause 5 provides that no immovable property situate in the Agency Tracts and owned by a member of the Scheduled Tribe shall be liable to be attached and sold in the execution of money decree.

188. Clause 6 creates certain offences and prescribes the penalties therefor. For example, if a person acquires any immovable property in contravention of any provision of the Regulations or continues in possession of such property after a decree for ejectment is passed, he will be prosecuted and sentenced to imprisonment for a term which may extend to one year.

189. These Regulations indicate a departure from the normal laws relating to immovable property. Normally, an owner of a immovable property is free to transfer his property to anyone he likes. But if he possesses property in the Agency Tracts or the Scheduled Areas, his right to transfer the property is restricted as he can transfer it only to a member of the Scheduled Tribe or to a Co-operative Society comprising solely of the members of the Scheduled Tribes. So also, under the usufructuary mortgage, possession has necessarily to be transferred to the mortgagee but these Regulations prescribe that in no case shall possession be delivered to the mortgagee.

190. It will be seen from the above that at least in two circumstances, the property of the member of the Scheduled Tribe or any other person in the Scheduled Area becomes the property of the State Government:-

(1) If a person is not able to sell his property either because a member of the Scheduled Tribe is not willing to purchase the property or is not willing to purchase the property on the terms at which it proposed to be sold, then the Agent, or the Agency Divisional Officer or any Prescribed Officer can, by order, acquire the property on payment of compensation. The property loses its original character and becomes the property of the State Government.

(2) If on a decree for ejectment being passed against a person in occupation of the property belonging to a Scheduled Tribe under a sale deed which is void, the property is sought to be restored to the transferor or his heirs but they are not willing to take back the property or their whereabouts are not known, it would be open to the Government to assign or transfer the property to any other member of the Scheduled Tribe or otherwise dispose it of as if it was the property, at the disposal of the State Government.

191. In all these circumstances, when the property either comes to vest in the State Government or becomes a property at the disposal of the State Government, the Government cannot. in view of the above, transfer the property to a "person" of its own choice but has to transfer, assign or sell to a member of the Scheduled Tribe or a Co-operative Society of the Scheduled Tribes.

192. The possibility of the Government disposing it of to a person who is not a member of the Scheduled Tribe is totally ruled out by the Regulations by providing that it shall be sold, assigned or transferred only to tribals or their Co-operative Society. If this applies to properties which become the Government properties, how the properties which are already the Government properties could be excluded from the applicability of these Regulations? The Government has to be bound down to the Constitutional scheme sought to be enforced through Regulations made by the Governor under Para 5(2) of the Fifth Schedule and cannot be permitted to transfer its own properties in favour of non-tribals so as to allow their infiltration into the Scheduled Area. The prohibition contained in Para 3(1)(a) that no person, whether he is a member of the Scheduled Tribe or not, shall transfer his immovable property to a non-tribal must, therefore, in its scope, cover the Government, as well, which, if it possess land in the Agency Tracts, cannot transfer it either by sale, allotment, lease or otherwise to a non-tribal. To this limited extent, it has to be treated as a "person" within the meaning of Clause 3(1)(a) of the Regulations.

193. It is contended by the learned counsel for the respondent that where the property is acquired by the Government on payment of compensation or it becomes the property at the disposal of the Government, such property, undoubtedly, has to be disposed of in favour of the member of the Scheduled Tribe or a Co-operative Society of the Scheduled Tribes but the Government also retains the power and choice to dispose it of in such other manner and subject to such conditions as may be prescribed. It is contended on the basis of the words "or in such other manner and subject to such conditions as may be prescribed" occurring in para 3(1)(c) that the Government is not bound to sell the property to a member of the Scheduled Tribe or the Co-operative Society of the Scheduled Tribe. It is contended that almost similar words have been used in Para 3(2)(b) where the property, if it is not taken back by the transferor who is a member of the Scheduled Tribe or his heirs, becomes the property at the disposal of the State Government and the State Government has the choice either to assign or sell the property to any member of the Scheduled Tribe or a Co-operative Society of the Scheduled Tribes or "otherwise dispose it of as if it was a property at the disposal of the Government". This interpretation cannot be accepted. The words "or in such other manner and subject to such conditions as may be prescribed" occurring in Para 3(1)(c) and the words "or otherwise dispose it of as if it was a property at the disposal of the State Government" have to be read, not in isolation, but in the context of other words used in those provisions. The emphasis throughout in these Regulations has been that the property would be sold or transferred only to a member of the Scheduled Tribe or their Co-operative Societies. The Constitutional scheme which is sought to be enforced through Regulations is that the property of the Scheduled Tribe or the immovable property situated in Agency Tracts may be protected and be not frittered away and further that they may retain their original character and may continue to belong to members of the Scheduled Tribe or their Co-operative Societies, or that if the property belongs to a non-tribal, it may not be transferred to a non-tribal and may be transferred to a tribal alone. The words "or in any other manner" in Para 3(1)(c) or the words "otherwise dispose it of as if it was a property at the disposal of the State Government" occurring in Para 3(2)(b) have to be read in that context with the result that even if the Government intended to deal with such immovable properties "in any other manner" it could deal only in a manner which would ultimately benefit a member of the Scheduled Tribe or their Co-operative Societies. The Fifth Schedule including Para

5 thereof as also the Regulations made thereunder by the Governor of Andhra Pradesh clearly seek to implement the national policy that the custom, culture, life-style and properties of the Scheduled Tribes in the Agency Tracts and other immovable properties situate therein shall be protected. The Government being under a legal constraint to deal with the property situated in the Agency Tracts only in the manner indicated above, cannot itself act beyond the scope of the Regulations by saying that it is free to dispose of its own properties in any manner it likes. If the Government was allowed to transfer or dispose of its own land in favour of non-tribals, it would completely destroy the legal and constitutional fabric made to protect the Scheduled Tribes. The prohibition, so to say, disqualifies non-tribals as a class from acquiring or getting property on transfer. On account of this disqualification, the Government cannot, even if it is not a "person" within the meaning of Para 3(1)(a), transfer, let out or allot its land or other immovable property to a non-tribal.

194. These Regulations have been made to give effect to the power of the Government under Clauses (a) and (b) of Para 5(2) of the Fifth Schedule for "Peace and Good Government" in the Agency Tracts. These Regulations also aim at ushering in an era of social equality where the most backward and isolated people who constitute the Scheduled Tribes may be rehabilitated effectively in the nation's main-stream. The prohibition to sell the land to non-tribals and the further requirement that if the property comes to be vested in the Government or it becomes property at the disposal of the Government, it will be sold, assigned or distributed only to the tribals also is a measure, may, a strong measure, in that direction to give effect to the philosophy of "Distributive Justice".

195. The Mines and Minerals (Regulation and Development) Act, 1957 has already been amended by insertion of Section 11(5) at the State level which provides that the Government land shall not be allotted for the purpose of mining to non-tribals. A lot of argument was raised on both sides whether this Amendment was retrospective or prospective. While it is contended on behalf of the respondents that the leases which had already been executed or renewed prior to the Amendment or introduction of Section 11(5), would not be affected the appellants in C.A. arising out of SLP (C) Nos. 17080-81 of 1995 argued that such leases, including renewed leases cannot be operated.

196. We have already held that the present scheme, set out in the Fifth Schedule and Regulations made by the Governor in exercise of the power under Para 5(2) of the Schedule, is to sell, distribute, assign or let out the Government land only to members of Scheduled Tribes. Section 11(5) introduced in the Act only seeks to give effect to what was already contained in the Fifth Schedule and the Regulations made thereunder. In order to set at rest the above controversy raised at various levels that the Government land could also be allotted to non-tribals, the Amendment was brought about in the Mines and Minerals (Regulation and Development) Act, 1957 so as to make it sure that it was never the intention that the Government land could be allotted to non-tribals. The Amendment only *(sic)*retrates the existing position.

197. I am short of time as Brother Ramaswamy is retiring tomorrow. It is not possible for me to write out in detail on other points involved in the case. Since I am agreeing with Brother Ramaswamy on the findings recorded by him on other issues involved in the case, specially those relating to forests and Conservation of Forests Act and the environmental questions, I conclude by saying that I am in respectful agreement with him. I also agree with the ultimate directions issued in the Judgment.

198. In view of the above, I am also of the opinion that the appeals of Samatha arising out of SLP (C) Nos. 17080-81 of 1995 deserve to be allowed and are hereby allowed while the other appeal arising out of SLP (C) No. 21457 of 1993 is dismissed.

Pattanaik, J.— Leave granted.

200. These two appeals by special leave are directed against the judgment of the Andhra Pradesh High Court dated 28.4.95 dismissing the two Writ Petitions filed by the present appellant which were registered as Writ Petition Nos. 9513 of 1993 and 7725 of 1994, by a common judgment. The appellant, a Rural Development Society of Peda Mallapuram, Sankhavaram Mandap in the State of Andhra Pradesh filed the two Writ Petitions as Public Interest Litigation seeking issuance of writ of mandamus to terminate the mining leases in Borra Gram Panchayat area of Anantagiri Mandal which had been granted and/or renewed in favour of the private respondents inter alia on the grounds that the said leases contravened the provisions of Andhra Pradesh Scheduled Area Land Transfer Regulation of 1959, as amended in 1970 (hereinafter referred to as the 'Regulation'), the leases violate the provisions of the Forest Conservation Act, 1980 (hereinafter referred to as the 'Conservation Act'); and such leases are prohibited under Section 11(5) of the Mines and Minerals (Regulation and Development) Act 1957 as amended by Act of 1991 (hereinafter referred to as 'The MMRD Act'). The appellant, who was the petitioner before the High Court advanced the contention that under the Regulation transfer of all lands in the schedule area to a non-tribal is prohibited and the said prohibition equally applied to the government land and as such the mining leases in favour of the private respondents who are non-tribals are void. In elaborating this contention it was contended that the word 'person' in Section 3(1) of the Regulation as amended in 1970 would include the Government. Further contention of the appellant was that in view of Section 2 of the Conservation Act no forest land could be utilised for non forest purpose without the consent of the Central Government and the lease holds favour of the private respondents being the forest land and there being no consent of the Central Government the leases are invalid. Lastly it was contended that in view of Section 11(5) of the MMRD Act the leases in favour of the private respondent who are non tribals must be declared to be void.

201. The Director of Mines and Geology, Government of Andhra Pradesh who was respondent no.2 before the High Court filed a counter-affidavit taking the stand that the leases in question in favour of the private respondents were prior to the Conservation Act coming into force and, therefore, the question of taking previous consent of the Central Government did not arise. On the question of alleged violation of the provisions of the Regulation it was stated that the prohibitions and restrictions in the Regulation are not intended to apply to the Government land and there was no bar under the Regulation for the Government to grant mining leases in favour of the non-tribals. On the question of applicability of Section 11(5) of the MMRD Act it was contended that the said provision is prospective in nature and no mining lease has been granted after enforcement of Section 11(5) of the MMRD Act in favour of any non-tribal. Respondent no. 4, the Forest Officer filed the counter affidavit stating that the Borra forest block was notified as reserve forest and some of the respondents have encroached into the reserved forest area and to that extent their operations are illegal. The private respondent no.13 before the High Court also filed a counter-affidavit adopting the stand taken by respondent no.2. The said respondent no.13 was a transferee from the original lessee. The other lessee-respondents also filed affidavits adopting the stand taken by respondent no.13.

202. The High Court by the impugned judgment came to the conclusion that the word 'person' in Section 3(1) of the Regulation does not include the Government and as such the government is not prohibited from transferring the government land in favour of non-tribals within the scheduled area. According to the High Court this conclusion is irresistible from the fact that in order to prohibit grant of mining lease in favour of the non-tribals within the scheduled area Section 11(5) of the MMRD Act was introduced in the year 1991. But the said provision is prospective in nature and would not apply to the existing leases. So far as the contention of applicability of the Conservation Act the High Court came to the conclusion that the said Act applies to the reserved forest and since it is not established as to the extent of the land covered by the mining leases which form a part of the reserved forest and since the joint survey conducted indicate that there is no lessee who is occupying the reserved forest area, except in one case where to an extent of two thousand metres of the mining lease forms a part of the reserved forest, the validity on account of the non compliance of the Conservation Act cannot be gone into. The High Court in the impugned judgment has also come to the conclusion that prior approval of the Central Government under Section 2 of the Forest Conservation Act is not required where the land in question has already broken in pursuance of a lease and in support of this conclusion reliance has been placed on the decision of this Court in *STATE OF BIHAR VS. BANSHI RAM* (1985) 3 SCC 643. The aforesaid view in *BANSHIT MODI's* case appears to have not been approved by the Court in the later cases "*AMBIKA QUARRY WORKS VS. STATE OF GUJARAT* (1987) 1 SCC 213. Further in view of the decisions of this Court in *S. NAGESWARAMMA's* case, *SUPREME COURT MONITORING COMMITTEE's* case and *GODAVARMAN's case*, the High Court committed error in relaying upon the ratio of BAKSHI RAM MODI's case. The High Court, therefore, observed that the Writ Petitioners may approach the Competent Authority in that regard seeking necessary relief and on such petitions being filed the appropriate authority would pass appropriate order bearing in mind the provisions of Section 2 of the Conservation Act. With these conclusions the Writ Petitions having been dismissed the present appeals by special leave have been preferred. Though the contentions before the High Court were limited to the aforesaid extent as indicated but before this Court the horizon was expanded and Dr. Rajiv Dhawan, learned senior counsel appearing for the appellant raised several contentions in assailing the validity of the continuance of the mining lease which according to the learned counsel are situated within the scheduled area. These two appeals initially had been heard by a Bench of two judges but later on in view of the question of law raised as well as in view of certain divergence of views, has been placed before a three Judge Bench and the matter had been re-argued.

203. It has been averred before this Court that the appellant Society was started in the year 1990 at the request of the local tribes of Peda Mallapuram area and the main objects of the society are implementation of various welfare schemes of the Government and creating awareness among tribal people of their rights and duties and protection of ecological balance and imparting of environmental education in the tribal area. The society operates in the Borra reserved forest area which was a part of the domain of Raja of Jaipur before independence. Within the forest area the tribal villagers occupy the land for cultivation and there are about 230 families settled in 14 villages occupying 436 acres within the enclosures which are threatened of eviction by the mining operators. It may be noticed that this assertion was not there in the Writ Petition filed before Andhra Pradesh High Court. The further assertion of facts in this Court is that within Anantagiri Mandal there are 230 families of tribals and they occupy roughly 800 acres and yet they are also threatened to be evicted by mining operators. The appellant further asserts that the Borra forest area is a scheduled area in Vishakhapatnam District of Andhra Pradesh and it lies in Anantgiri hills. The Borra caves are of unique occurrence and the entire area is rich in mineral wealth, particularly mica and calcite. It is averred that the mining activity in the said area has started since 1946 and the said mining operations are being carried on in the reserved forest area, notwithstanding the prohibitions contained in different laws as already stated, and the State of Andhra Pradesh has not taken any initiative in stopping the mining activities which has resulted human hazards to the peaceful living of the tribal people and which affects the ecology and environment of the area and, therefore the same should be prohibited by issuance of mandamus. In the grounds taken before this Court in these Special Leave Petition it has been urged that under the amended Section 3(1) of the Regulation transfer of immovable property situated in the schedule area to non-tribal is prohibited and the word 'person' used in Section 3(1) includes the government and as such the leases contravened Section 3(1) of the Regulation. The further ground taken is that under Section 2 of the Conservation Act without the prior approval of the Central Government the State Government could not have granted mining leases within the forest area as mining obviously is a non-forest purpose. The private respondent no. 12, who is the Managing Director of the Company, filed the counter-affidavit taking the positive stand that the mining leases held by them do not form part of the scheduled area ad further the leases have been granted much prior to the amended provisions of the Regulation as well as much prior to the coming into force of the Conservation Act and, therefore, are not hit by any prohibitions and restrictions contained in those provisions. Respondent no. 19 has filed the counter-affidavit taking the stand that the lease has been granted in favour of Shri M. Laxmi Narainan on 17.11.1984 and certain other leases had been granted in Anantgiri Mandal to said Shri M. Laxmi Narainan on 24.1.1986. The transfer of mining leases from the original lessee was granted by the appropriate authority under the provisions of the MMRD Act and the Mineral Concession Rules framed thereunder and there has been no violation of any Act or Regulation in allowing such mining activities. It has also been stated that the mining activity does not encroach upon any forest area or reserved forest area and nowhere has the petitioner provided any factful foundation for allegation to demonstrate that any part of the land held by respondent no. 19 is within any forest land. And in the absence of such factful metrix it is not possible to hold that there has been violation of Section 2 of the Conservation Act. It has also been averred by the respondent that the leases do not destroy the ecological balance and do not disturb the flora and fauna and the Government has granted the mining leases only after complying with the statutory requirements. On the question of Interpretation of the provisions of the Regulation it has been stated that the word 'person' in Section 3(1) does not include the Government and therefore, the provisions of the Regulation have no application to the Government land. In paragrpah 20 of the counter-affidavit it has been reiterated :

"There is no averment by the petitioner

> that this respondent has been in possession of any forest area or the area ear marked for the reserve forest. Therefore the statutory ban in Section 2 of Forest (Conservation) Act is not applicable to the leases granted to this respondent company."

204. The said assertion has also been repeated in paragraph 25 of the counter-affidavit. Several private respondents have also filed counter-affidavit in this Court more or less taking similar stand and it is therefore, not necessary to repeat the same. But it would be appropriate to notice the stand taken by the State of Andhra Pradesh and its officials who have been arrayed as respondent nos. 1 to 4. The State in its affidavit have indicated that the mining leases which are in dispute had been granted much prior to the coming into force of the Forest Conservation Act of 1980 and, therefore, there has been no infraction of the aforesaid Act. On the question of applicability of the provisions of the Regulation it has been stated that the Government is not 'person' within the meaning of Section 3(1)(a) of the Regulation and the government being the sole owner of the land has the right to transfer the same to any individual/company. With regard to the activities of the appellant-society it has been averred that the society is working for its selfish ends and is mis-guiding the tribals who are peacefully living and tribals are unnecessarily dragged into litigation. It has also been stated that the areas which are under occupation of the tribals have been surveyed and the said areas have been deleted from the mining lease and, therefore, the assertion that the tribals are being threatened by the mining operators from being dispossessed is not correct. It has also been averred that the mining activities are on the exposed mineral deposit and no extensive mining has been taken in the area damaging the forest. With regard to the benefits obtained by the State on account of such mining activities, it has been stated that not only it has provided employment opportunity to the local tribals but also encourages mineral based industries in the district which provides good opportunity to the educated unemployed. The State in its affidavit has also averred that all the mining leases were granted in accordance with the prescribed law and there is no possibility of endangering the Borra caves by the alleged mining activities. The State has further stated that after coming into force of Section 11(5) of the MMRD Act no mining leases within the scheduled area has been granted in favour of any non-tribal in contravention of the aforesaid provisions of the MMRD Act. It has also been stated that every care has been taken by the Government to protect the interest of the tribals and to ensure that there is no blasting in the mining area to rehabilitate the affected people. The State in its affidavit has also indicated as to which mine continues to be operative and which is not operative as on the date of the affidavit.

205. Dr. Dhawan, the learned senior counsel appearing for the appellant contended that the history of the tribal areas traced from the administration under the British rule to the inclusion of Schedule V in the Constitution conferring a special power on the Governor to frame Regulation for peace and good government in the area would clearly indicate that there should not be any allotment of land to the non-tribal within the tribal area, be it the government land or land belonging to the tribals, which in turn would accord responsibility to the tribals for the economic development of the area. According to the learned senior counsel one of the purposes for which Schedule V was engrafted in the Constitution conferring power on the Governor and not on the respective legislatures of the States for the administration of the tribal area is to ensure distributive justice, especially of land and that purpose will be frustrated if government land within the tribal area is allocated in favour of non-tribals, whether it is for the purposes of mining or for any other purpose. It is, therefore, urged that this purpose should be borne in mind in interpreting Regulation framed by the Governor in exercise of power conferred upon him under Schedule V to the Constitution. The learned senior counsel urged that the term 'peace and good government' should be given a wide interpretation and the expression 'regulate the allotment of land to members of Schedule-Tribes in such area' in Schedule V(2)(b) should be construed to mean that the Governor should frame regulation ensuring that land does not pass out from tribals and the land allotments are made exclusively to tribals and the distribution of land amongst them inter se can be regulated. The learned senior counsel further urged that the provisions of the Constitution itself mandate an obligation on the Governor to frame regulation prohibiting transfer of land of all category within the schedule area in favour of a non-tribal. According to Dr. Dhawan, if the expression 'person' used in first part of Regulation 3(1)(a) is interpreted to include the State, thereby connoting that the government land also within the schedule area cannot be transferred in favour of a non-tribal then the very purpose of conferring power on the Governor for administration of tribal area could be achieved and such an interpretation would not only prevent the exploitation of tribals from non-tribals but would also advance the interest of the tribals and would secure substantive distributive justice for the tribals. According to the learned senior counsel appearing for the appellant the regulations and statutes affecting the tribal regime must be given a purposive interpretation so that the raison d'etre of the regime is not defeated. So far as the Conservation Act is concerned, the counsel argued that in view of the embargo contained in Section 2 of the Conservation Act prior permission of Central Government not having been obtained the mining activities within the forest area cannot be permitted to be continued. In relation to the provisions of the Environment Protection Act, the learned senior counsel contended that the Central Government is under a statutory duty to protect the environment and co-ordinate the activities of the State Government under the Environment Protection Act of 1986 and such statutory obligation not having been discharged by the Central Government and the mining activities within the schedule area being hazardous to human health this Court should compel the Union Government to perform its statutory obligation. So far as the prohibition under Section 11(5) of MMRD Act is concerned, it is contended by Dr. Dhawan, learned senior counsel appearing for the appellant that Section 11(5) in the MMRD Act is merely in the nature of clarification to the provisions of Section 3(1)(a) of the Regulation and in view of such provision the mining activities after coming into force of the aforesaid provision cannot be permitted to be continued. Let me now examine the contentions raised to find out, how many of them would be sustainable.

Administration of Tribal areas under the British Rule and the debates in the Constituent Assembly in relation to Administration of Tribal Area, leading to engraftment of Schedule V in the Constitution-

206. The Indian Statutory (simon) Commission in its report in 1930 indicated that these tribal areas covered 1,20,000 square miles with a population of about eleven million. These areas are located mostly in Bihar, Orissa, Andhra Pradesh, Madhya Pradesh, Bengal and Assam. Even during the British rule, because of the social and economical conditions of these tribal people special laws were made applicable in those areas. In the book "THE FRAMING OF INDIA's CONSTITUTION"- A study by B. Shiva Rao, it has been stated that there were two dangers to which subjection to normal laws would have specially exposed these tribal people, and both arose out of the fact that they were primitive, simple, unsophisticated and frequently improvident. There was also a risk of their agricultural land passing to the more civilised section of the population, and the occupation of the tribals was for the most part agricultural and secondly they were likely to get into the "wiles of the moneylender". It was thus the primary aim of the government policy then to protect these people from these two dangers and preserve their tribal customs and this was achieved by prescribing special procedures applicable to these backward areas. The Scheduled Districts Act, enacted in 1874 was the first measure adopted to deal with these areas and the said Act enabled the executive to extend any enactment in force in any part of the British India to a "Scheduled district" with such modifications as might be considered necessary. Thus the executive had the power to exclude these areas from the normal operation of ordinary law and give such protection as they might need. Even in Montagu-Chelmsford Report of 1918 it was suggested that the political reforms contemplated for the rest of India could not apply to these backward areas where the people were primitive and thus these backward tracts were to be excluded from the jurisdiction of the reformed Provincial Governments and administered personally by the heads of the Provinces. In the Government of India Act 1919 these tracts were divided into two categories and some of the areas were wholly excluded from the scope of the reforms. Therefore, neither the Central nor the Provincial Legislature had the power to make laws applicable to these areas and the power of legislation was vested in the Governor acting with his Executive Council, the Ministers being excluded from having any share in the responsibility for the administration of these areas. Until the Simon Commission's report, the primary object and the policy of the government in relation to the tribal areas was to give the inhabitants of the tribal areas security of land tenure, freedom in the pursuit of their traditional means of livelihood, and a reasonable exercise of their ancestral customs. The Simon Commission, however, realised that isolation of these people from the main currents of progress would not be a satisfactory long term solution and, therefore, it would be necessary to educate these people to become self-reliant. As the Provincial Government was not inclined to devote special attention for the upliftment of these tribal people mostly because of the fact that backward tract was a deficit area and in view of the magnitude and complexity of problem the Commission had recommended that the responsibility for the backward classes would be adequately discharged only if it was entrusted to the Centre. But at the same time, it was also recognised that it would not be a practicable arrangement if centralisation of administrative authority in these areas led to a situation in which these areas would be separated from the Provinces of which they were an integral part. The Commission, therefore had suggested that the Central Government should use the Governors for administration of these areas and it could be laid down by rules how far the Governor would act in consultation with his Ministers in the discharge of these agency duties. This proposal, however, was not adopted in the constitutional reforms of 1935. Under the Government of India Act of 1935, these backward areas were classified as excluded areas and partially excluded areas. The excluded areas in Assam, Madras, Bengal, North-West Frontier Province were placed under the personal rule of the governor acting in his discretion and while the partially excluded areas were within the field of ministerial responsibility and the Governors exercised a special responsibility in respect of the administration of these areas and they had the power in their individual judgment*(sic)* overrule their Ministers if they thought for to do so. No Act of the Federal or Provincial Legislature would apply to any of these areas but the Governors had the authority to apply such Acts with such modification as they considered necessary, as is apparent from Sections 91 and 92 of the Government of India Act 1935. The Cabinet Mission's statement of May 16, 1946 mentioned about the requirement of the special attention of the Constituent Assembly in respect of these tribal areas.

207. Vth Schedule of the Constitution as well as paragraph 5 of the said Schedule which confers power on the Governor to make Regulations for the peace and good government in any area in the State which is a schedule area nowhere indicates that there should be no alienation of any land in favour of a non-tribal within the said area. The aforesaid provision is an enabling provision conferring power on the Governor to frame Regulation for peace and good government and the Regulation in question may provide for prohibiting or restricting transfer of land by or among the members of the Scheduled Tribes, regulate the allotment of land to members of the Scheduled Tribes and regulate the carrying on business as money-lender by persons who lend money to the Scheduled Tribes. It has, therefore, become necessary to find out from the Debates in the Constituent Assembly as to whether the Constitution makers at all intended to prohibit alienation of any land in favour of a non-tribal within the tribal area. In course of arguments while placing the Debates in the Constituent Assembly Dr. Rajiv Dhawan, learned senior counsel at one point of time had advanced an extreme argument that all lands within the tribal area belong to the tribals and only during the British regime the tribals were denied of their rights over the lands and, therefore, this Court would be justified in holding that the lands within the entire tribal area belong only to them and the State has no authority or power in respect of the said land. In support of the said contention the learned senior counsel placed reliance on a decision of the Australian Court in the case of *MABO AND OTHERS VS. THE STATE OF OUEENSLAND* reported in Commonwealth Law Reports Vol. 175 (1992) at page 1. The learned senior counsel had argued that what has been held by the High Court of Australia in the aforesaid case, namely, Aborigines had the title to the land and it never got extinguished by annexation by Crown or by the application of common law in Australia, should apply to the lands within the tribal area in India. But, however, at later point of time the learned counsel did not persue the said contention and, therefore, we have to examine and find out the correctness of the submission as to whether under the Constitutional Scheme there has been a prohibition for alienation of any land within the tribal area in favour of a non-Scheduled Tribes. On going through the Constituent Assembly Debates and the book "The Framing of India's Constitution - A study by B. Shiva Rao as well as B. Shiva Rao's The Framing of India's Constitution Volume III, it appears that on account of the Study already made by the Britishers and several reports obtained prior to Independence, the question of administration of tribal areas did engage the attention of the Constitution Assembly for a considerable period. The Constituent Assembly had formed two committees, one for the tribal people of Assam and other for the excluded and partially excluded areas in

Provinces other than Assam. We are really concerned with the second Committee which had examined the problems of the tribal people in all other parts of the country excepting Assam. The Committee in fact had suggested that the solution to the problem of backward areas lies in developing the area and not in isolating the same. The Committee had also suggested that it should be the responsibility of the centre to draw up the schemes for the development of these areas and ensure that such schemes were duly implemented by the States. But the said report could not be considered by the Constituent Assembly having been received at a late stage. The Drafting Committee of the Constitution, however, considered the suggestion of the Advisory Committee and drafted the Vth Schedule of the Constitution. We are in the present case really concerned with Clause 6 dealing with alienation and allotment of lands which is extracted hereinbelow:

> 6. Alienation and allotment of lands to non-tribals in scheduled areas: (1) It shall not be lawful for a member of the Scheduled Tribes to transfer any land in a scheduled area to any person who is not a member of the Scheduled Tribes:
>
> (2) No land in a scheduled area vested in the State within which such area is situated shall be allotted to, or settled with, any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council for the State.

208. Clause 7 of the Schedule B deals with money lending which is extracted hereunder:

> 7. Regulation of money - lending in scheduled areas : The Governor may, and if so advised by the Tribes Advisory Council for the State shall, by public notification direct that no person shall carry on business as a money-lender in a scheduled area in the State except under or in accordance with the conditions of a licence issued by an officer authorised in this behalf by the Government of the State and every such direction shall provide that a breach of it shall be an offence, and shall specify the penalty with which it shall be punishable.

209. Clause 9 of Schedule V deals with Governor's power in extending the provision to other areas which is extracted hereunder:

> 9. Application of Part II to areas other than scheduled areas : (1) The Governor may, at any time by public notification, direct that all or any of the provisions of this Part shall on and from such date as may be specified in the notification apply in relation to any area in the State inhabited by members of any Scheduled Tribe other than a scheduled area as they apply in relation to a scheduled area in the State, and the publication of such notification shall be conclusive evidence that such provisions have been duly applied in relation to such other area.
>
> (2) The Governor may by a like notification direct that all or any of the provisions of this Part shall on and from such date as may be specified in the notification cease to apply in relation to any area in the State in respect of which a notification may have been issued under sub-paragraph (1) of this paragraph.
>
> See the Framing of India's Constitution by B. shiva Rao Volume III)

210. We are really concerned with Clause 6 of the Draft Constitution dealing with the alienation and allotment of lands to non-tribals in the scheduled areas. The Draft Constitution, therefore, had put two restrictions, namely, a member of a Scheduled Tribe was not entitled to transfer land within the scheduled area to a member of non-scheduled tribe, and so far as the land vested in the State is concerned, the prohibition was that the said land belonging to the State should not be allotted or settled in favour of a non-scheduled tribe except in accordance with the Rules made in that behalf by the Governor in consultation with the Tribes' Advisory Council. To the aforesaid Draft several amendments were proposed by several Speakers. So far as paragraph 6 of Schedule V of the Draft Constitution is concerned, the proposal in the draft that the land belonging to the State should not be allotted to or settled with any person who is not a member of Scheduled Tribe was rejected and, therefore, in the final form in Scheduled V there is no such indication that even the government land within the Scheduled area should not be allotted to a non-Scheduled Tribe person. B. Shiva Rao in his book "THE FRAMING OF INDIA'S CONSTITUTION - A STUDY, dealing with the Scheduled and Tribal Areas has stated that for nearly a century under British rule special laws were applicable to what were called "backward areas" and two dangers were there to which subjection to normal laws would have specially exposed these people, and both arose out of the fact that they were primitive people, simple unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural, and, secondly, they were likely to get into the `wiles of the moneylender". The primary aim of government policy then was to protect them from these two dangers and preserve their tribal customs: and this was achieved by prescribing special procedures applicable to these backward areas.

211. After going through the Constituent Assembly Debates, the Draft Constitution in relation to Schedule V and the final Constitution as it emerged, after amendments were brought about, it appears that it was not the intention of the Constitution Makers to prohibit alienation of the land vested in the State within the scheduled area in favour of a non-Scheduled Tribe person. On the other hand, though it was in paragraph 6(2) of the Draft Constitution of Schedule V but it stood deleted while bringing the Vth Schedule in its final form. In this view of the matter we are unable to accept the contention of Dr. Rajiv Dhawan, learned senior counsel that the framers of the Constitution intended to prohibit alienation of the government land in favour of non-Scheduled Tribe person within the scheduled area which has been engrafted in Vth Schedule of the Constitution.

CONSTITUTIONAL MANDATE AS ENGRAFTED IN ARTICLE 46, ARTICLE 39(b) AS WELL AS THE DECLARATION 'RIGHT TO DEVELOPMENT' ADOPTED BY UNITED NATIONS - IN RELATION TO PROHIBITION OF ALIENATION OF GOVERNMENT LAND WITHIN THE TRIBAL AREA IN FAVOUR OF A NON-TRIBAL PERSON

212. As indicated in the earlier part of this judgment vast track of land lie within the tribal area which is rich in mineral resources and the entire mineral resources of the country lie within the schedule area of different States. In interpreting the provisions of the Regulation and the Constitutional mandate engrafted in Fifth Schedule of the Constitution as well as different other Articles of the Constitution, it must be borne in mind that the interpretation should subserve the main object, namely the development of the schedule area and the protection of the tribal people from exploitation of the non-tribal people. It is in this prospective*(sic)* Article 46 and 37(b) of the Constitution have to be looked into.

213. Article 46 of the Constitution no doubt mandates the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and protect them from social injustice and all forms of exploitation. The said Article embodies the concept of 'distributive justice' which connotes the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. It means those who have been deprived of their properties by unconscionable bargaining should be restored to their property. By taking recourse to this Article the law invalidating transfers of land belonging to a member of the Scheduled Tribes and restoration of such land to the transferor was held constitutionally valid. Similarly, when Article 39(b) of the Constitution enjoins upon the State to have its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, what, it connotes is a duty on the State for building of a welfare State and an egalitarian social order. The object is that the basic need of a common man must be fulfilled and the State should endeavour to change the structure of the society. The aforesaid provision no doubt, may support a case of nationalisation of material resources but by no stretch of imagination it can be said that it enjoins upon the State to exploit the mineral resources within the Scheduled area by itself or through the Scheduled Tribes alone. The declaration of 'Right to Development' adopted by the United Nation and ratified by India no doubt casts a responsibility on the State to promote and protect social and economic order for development of all people and it has become a States' responsibility to create conditions favourable to the realisation of the right to development. In other words it is the States' responsibility to ensure development and eliminate the obstacles to the State development. It is the States' responsibility to eradicate social injustice. It is the States' responsibility to see the uplifment of the tribals within the Scheduled areas. There possibly cannot be any dispute with the proposition that the State should formulate its policies and laws so that the neglected tribals within the Scheduled areas get equal opportunity with their counterparts in the other sophisticated parts of the State and State should be empowered to make laws for protection of these tribals from being exploited by the non-tribals. State should take all effective steps so as to eradicate inequalities.

214. The aforesaid scheme of the Constitution in our considered opinion does not in any manner suggest that alienation of Government land within the schedule area was intended to be prohibited in favour of anon-tribal person.

ARTICLE 244 AND FIFTH SCHEDULE OF THE CONSTITUTION:

215. Article 244 (1) of the Constitution makes the provisions of the Fifth Schedule applicable to the Scheduled areas and Scheduled Tribes in all States other than Assam and Meghalaya. Article 244(1) of the Constitution read with Fifth Schedule vests with the Governor of the State, the entire governmental power in respect of the schedule areas within the State. The framers of the Constitution found the necessity of vesting such power on the Governors of the State as the people of the Scheduled areas were culturally backward and their social and other customs are different from the rest of the country. Which area is the Scheduled area within the State is determined by the President by an order. By virtue of the fifth Schedule of the Constitution the Governor is authorised to direct that any Act of Parliament or of the Legislature of a State shall not apply to a Scheduled area or shall apply only subject to exceptions and modifications. The Governor is also authorised to make regulations to prohibit or restrict transfer of land by or amongst the members of the Scheduled

Tribes, regulate the allotment of land and regulate the business of money lending and all such regulations by the Governor have to be assented to by the President.

216. Section 5(2) of Schedule V indicates the amplitude of the Governor's power to make regulation for peace and good government in the Scheduled area in a State. It also stipulates the field over which regulations can be framed by the Governor as contained in Clauses [a] to [c] thereof. The Governor is the sole judge to decide as to what would be the regulation which would be necessary for the peace and good government of the area in question. The ambit of the power of Governor is not restricted to the entries in the VIIth Schedule and the Governor is empowered even to over-ride an act of Parliament or of a State Legislature so far as its applicability to the Scheduled area is concerned. Clause (a) to (c) of section 5(2) of Schedule V indicate that the Governor may frame regulation prohibiting or restricting the transfer of land by or among members of the Scheduled Tribes within the Scheduled area, regulate the allotment of lands to the members of the Scheduled Tribes in the area; and regulate the carrying on of business as money-lender by persons who lend money to the members of the Scheduled Tribes in such area. It would thus appear, as the Britishers during the British rule, were really concerned to save the tribals of the area from being exploited by the non-tribals, after coming into force of the Constitution, similar power was conferred on the Governor to make regulation for achieving the same object, namely, to save the tribals belonging to the scheduled area from the exploitation of non-tribals. Any Regulation framed by the Governor required to be interpreted bearing in mind the aforesaid objective with which the Constitution conferred power on the Governor under the Fifth Schedule.

THE ANDHRA PRADESH SCHEDULE AREA LAND TRANSFER REGULATION 1959 - WHETHER REGULATION 3(1) IS CONTRAVENED BY GRANT/RENEWAL OF MINING LEASES IN FAVOUR OF NON-TRIBALS.

217. This Regulation has been framed by the Governor in exercise of power conferred upon him under Paragraph 5(2) of the Fifth Schedule to the Constitution. The original Regulation is Regulation 1 of 1959 which was subsequently amended in 1970. The original Regulation prior to its amendment so far as transfer of immovable property by members of Scheduled Tribes is concerned, as contained in Regulation 3 stood thus:

> 3. (1) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a member of a Scheduled Tribe, shall be absolutely null and void unless made —
>
> (i) in favour of any other member of a Scheduled Tribe or a registered society as defined in clause (f) of Section 2 of the Madras co-operative Societies Act, 1932 (Madras Act VI of 1932), composed solely of members of the Scheduled Tribes, or
>
> (ii) with the previous sanction of the State Government, or subject to rules made in this behalf, with the previous consent in writing of the Agent of any prescribed officer.
>
> Explanation. — The expression "transfer" in this section includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe in favour of any other member of a Scheduled Tribes benami for the benefit of a person who is not a member of a Scheduled Tribe.
>
> (2)(a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency

Divisional Officer or any other prescribed officer may, on application by any one interested, or on information given in writing by a public servant, or suo moto decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.

(b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a registered society as defined inclause (f) of section 2 of the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of the State Government.

(3)(a) Subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2) shall lie within such time as may be prescribed—

(i) if the decree or order was passed by the Agent, to the State Government;

(ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and

(iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.

(B) the appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefor."

After the amendment in 1970 Section 3(1) reads thus :-

"(a) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964), which is composed solely of members of the Scheduled Tribes.

(b) Until the contrary is proved, any immovable property situated in the Agency tracts, and in the possession of a person who is not a member of a Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

(C) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer, for the acquisition of such land by the State Government, and the Agent, Agency Divisional Officer or the prescribed officer, as the case may be, may, by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (act X of 1961), and such land shall thereupon vest in the State Government free all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered

> under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled tribes or in such other manner and subject to such conditions as may be prescribed."

218. So far as the regulation prior to its amendment in 1970 is concerned, a plain reading thereof clearly indicates that the Governor has framed the regulation as a regulatory measure putting some embargo on the power of transfer of a member belonging to Scheduled Tribe in respect of his immovable property. The said embargo enabled a member of a Scheduled Tribe to transfer the immovable property only in favour of another member of a Scheduled Tribe or in favour of a co-operative society composed solely of members of a Scheduled Tribe. If the transfer was intended to be made in favour of a non-Scheduled Tribe member then it could be so made but only with previous sanction of the State Government or with the previous consent in writing of the agent or any prescribed officer subject to the rules made in that behalf. Thus immovable property even belonging to a Scheduled Tribe could be lawfully transferred in favour of a non-Scheduled Tribe member but only with previous sanction of the State Government. Under the pre-amended provisions, therefore question of any fetter on the powers of the State Government in transferring government land in favour of a non-tribal did not arise at all. The question that arises for consideration is whether there has been any change under the provisions of 1970 Act and has there been a total prohibition of transfer of any land in favour of a non-Scheduled Tribe person in the Agency tracts.

219. Dr. Rajiv Dhawan, learned senior counsel appearing for the appellant in this context advanced his argument that the entire object of the Amendment Act of 1970 was to prohibit totally transfer of any land in favour of a non-tribal member within the Agency tract and accordingly the word 'person' in Section 3(1)(a) of the regulation after the amendment would bring within its sweep the State Government though ordinarily the expression 'person' may not bring within its sweep the State Government. According to Mr. Dhawan, learned senior counsel appearing for the appellant the word 'person' must be given the widest interpretation so as to bring within its sweep the State Government which would be consistent with the very object for which the amendment was brought into force so that the integrity of the tribal regime is maintained. On being faced with the difficulties in giving same interpretation to the word 'person' used in Section 3(1)(a) throughout the learned counsel urged that it is permissible to give a different meaning to the same word used in the same statute depending upon the object sought to be achieved by the statute and, therefore, it would be within the principles of interpretation to interpret the word 'person' occurring in First Part of Section 3(1)(a) to include the State Government whereas the same word 'person' used in the latter part of Section 3(1)(a) may be interpreted to mean 'an individual'. In support of this contention the learned counsel relied upon the decisions of this Court in the case of *State of West Bengal vs. Union of India* (1964) 1 SCR 371, *Printers (Mysore) Ltd. & anr. vs. Asstt. Commercial Tax Officer & Others* (1994) 2 SCC 434, *Commissioner of Income Tax, Bangalore vs. J.H. Gotla Vadagiri* (1985) 4 SCC 343 and *Dr. M. Ismail Faruqui and others etc. etc. vs. Union of India & Ors. etc. etc.* (1994) 6 SCC 360. The learned counsel also urged that this Court has accepted the principle that a wide interpretation has to be given to the meaning of immovable property while interpreting the provisions of the regulation in order to fulfil the purpose of the tribal area regulation in the case of *P. Rami*

Reddy & Ors. etc. vs. State of Andhra Pradesh & Anr. etc. 1988 Supp. (1) SCR 443, *Lingappa Pochanna Appelwar vs. State of Maharashtra & Anr. etc.* (1985) 1 SCC 479 and *Manchegowda and others vs. State of Karnataka and others* (1984) 3 SCC 301, and therefore, the same rules of construction of giving a wider interpretation to the expression 'person' used in Section 3(1)(a) of the regulation should be adhered to.

220. Mr. Sudhir Chandra, learned counsel appearing for the respondent, on the other hand contended that the regulation in question prior to its amendment does not prohibit transfer of land by any person in favour of non-Scheduled Tribe person but merely postulates that such a transfer must be with the consent of the competent authority. Though after the amendment in 1970 a more stringent measure has been adopted but all the restrictions are in relation to the land belonging to a Scheduled Tribe. A statutory presumption has been brought in so that whenever within the Agency tract any immovable property is found to be in possession of a non-Scheduled Tribe person then burden would be on the non-Scheduled Tribe person to establish that he has not come in possession of the land by way of a transfer from the Scheduled Tribe person. The aforesaid stringent provision has obviously been made to achieve the main objective to save the tribals from the exploitation of non-tribals. But by no strentch of imagination the restrictions contained in regulation 3(1) even after its amendment can be said to apply to the State Government in respect of the government land. According to the learned counsel Mr. Sudhir Chandra if interpretation as to the word 'person', as contended by Dr. Rajiv Dhawan, learned senior counsel is accepted then it would lead to absurdity and the provisions of Section 3(1)(a) would be meaningless. The learned counsel further contended that there is intrinsic evidence in clause (a) itself to hold that the word 'person' does not include State. Lastly the learned counsel urged that bearing in mind the object with which the Constitution has conferred power on the Governor to frame regulation and the object with which the Governor has framed the regulation, there is no imperative to construe the word 'person' in Section 3(1)(a) of the regulation to include the State Government. Such an interpretation according to the learned counsel for the respondents would go against the concept of upliftment of the tribals within the tribal area inasmuch as even the State Government would be denuded of its power of transferring government land in favour of any non-Scheduled Tribe person or organisation even for the purpose of setting up of a hospital or any other philanthropic purpose. When mines and minerals lie in abandance mostly in the tribal areas and vest in the State Government, if the embargo contained in regulation 3(1)(a) applies to the State Government by interpreting the word 'person' to include the State Government then there cannot be any exploitation of mineral resources in the country unless it is done either by the State itself or through the Scheduled Tribe person and such interpretation would be grossly detrimental to the general upliftment of the tribal people and, therefore, the counsel suggests that such an interpretation would not be given to the word 'person' in regulation 3(1)(a).

221. In view of the rival submissions at the Bar the crucial question arises for consideration is how the word 'person' in first part of regulation 3(1)(a) is to be interpreted? In other words the very word 'person' used in regulation 3(1)(a) itself whether should be interpreted differently and whether such an interpretation is necessary to subserve the object for which the regulation has been brought forward. As has been stated earlier, the history of legislation as discussed, treating the tribal areas different from the other areas is basically intended to save the tribal people from being exploited by the non-tribals. It is with that objective Article 244 of the Constitution made the fifth Schedule applicable to administer scheduled area and tribal area and the Fifth Schedule of the Constitution, in turn, conferred power on the Governor to notify the laws made by Parliament or by the legislature of the State to apply or not to apply and further Governor has been conferred power to make regulation for the peace and good government of any area within a State. Such wide power has been conferred upon the Governor which is plenary in nature so that Governor can by regulation prevent exploitation of the tribals from the non-tribals. When such legislations made by Governor in exercise of power has been challenged Courts have upheld the validity of the same on the ground that it is intended to save the tribals from the other non-tribals in the area who usually take advantage of the simplicity and ignorance of the tribal people. But it is difficult to accept the contention of Dr. Rajiv Dhawan, learned senior counsel appearing for the appellant, that the constitutional scheme intended total prohibition of transfer of even the government land in favour of the non-tribal. In *P. RAMI REDDY'S* case (supra) this Court after tracing the history of the Regulation, namely, Andhra Pradesh Scheduled Area Land Transfer Regulation, 1959 (Regulation I of 1959) and the subsequent amendment thereto in the amending Regulation of 1970 came to the conclusion that 1959) Regulation was amended as difficulties were experienced by the Government in implementing the ejectment procedures under the said Regulation, inasmuch as it was not always easy for the concerned authority to ascertain the origin of the right under which the non-tribal is claiming possession and whether the land under possession of a non-tribal or not. According to the learned judges the changes effected by the amended Regulation were :-

(i) A rule of presumption was introduced to the effect that unless the contrary is proved, where a non-tribal is in possession of land in the Scheduled areas, he or his predecessors-in-interest, shall be deemed to have acquired it through transfer from a tribal;

(ii) Transfers of land in Scheduled Areas in favour of non-tribals shall be wholly prohibited in future;

(iii) Non-tribals holding lands in the Scheduled Areas shall be prohibited form transferring their lands in favour of persons other than tribals. Only partitions and devolution by succession of lands held by them shall be permitted; and

(iv) where a tribal or non-tribal is unable to sell his land to a tribal on reasonable terms, it shall be open to him to surrender the land to Government who shall thereupon be obliged to acquire it on payment of appropriate compensation."

222. Thus the changes brought about by the amended Regulation of 1970 were essentially intended to facilitate effective enforcement of 1959 Regulation and the object of the amended Regulation cannot be held to be total prohibition of alienation of all land including a government land within the scheduled area in favour of a non-tribal. Bearing in mind the aforesaid object of the amended regulation and the Constitutional scheme the word 'person' used in regulation 3 (1)(a) has to be construed and while so construing certain principles of statutory interpretation have also to be borne in mind.

WHETHER THE WORD 'PERSON' IN THE REGULATION SHOULD BE INTERPRETED DIFFERENTLY AND IN THE FIRST PART OF REGULATION 3(1)(a) IT SHOULD BE INTERPRETED TO INCLUDE STATE WHEREAS IN THE OTHER PART IT SHOULD BE INTERPRETED TO MEAN A NATURAL PERSON.

223. Dr. Rajiv Dhawan, the learned senior counsel appearing for the appellant contended that the word 'person' occurring in first part of Section 3(1)(a) of the Regulation should be construed to mean the 'State' so that the real object of prohibiting alienation of any land within the scheduled area in favour of a non-tribal person can be achieved. According to the learned counsel it is a permissible rule of construction of a statute to construe the same words used in the same statute differently depending upon the context in which it is used and the object sought to be achieved. Mr. Sudhir Chander, learned counsel appearing for the respondents on the other hand contended that ordinarily a particular word used in a particular statute should receive the same meaning unless and until it is necessary to ascribe a different meaning to achieve any particular objective for which the statute is intended. But according to the learned counsel it was not the intention of the Constitution makers to prohibit alienation of any land within the scheduled area in favour of a non tribal person and on the other hand the objective was to put restrictions on the tribal people from transferring their land in favour of non-tribal person so that the tribal people can be saved from being exploited by the sophisticated non-tribal people. This being the objective, there is no necessity to construe the word 'person' in first part of clause 3(1)(a) of the Regulation to include the State Government also.

224. It is a cardinal rule of construction of statute that the statute must be read as a whole and construction should be put to all the parts together and not of anyone part only by itself. Every clause of a statute is required to be construed with reference to the context and other clauses of the Act so that so far as possible the meaning of the enactment of the whole statute would be consistent. When legislature uses the same word in different parts of the same Section or statute, there is a presumption that the word is used in the same sense throughout. It was so held by this Court in the following cases : *SURESH CHAND VS. GULAMCHISTI* (1990 (1) SCR 186. *MOHD. SHAFI VS. SEVENTH ADDITIONAL DISTRICT & SESSIONS JUDGE, ALLAHABAD & ORS.* 1977(2) SCR 464, *RAGHUBANS NARAIN SIGH VS. THE UTTAR PRADESH GOVERNMENT THROUGH COLLECTOR OF BIJNOR* 1967 (1) SCR 489. But the aforesaid presumption can easily be displaced by the context in which the particular word is used. In *FARELL vs. ALEXANDER* (1976) 2 All ENGLAND REPORT 721 it was stated that where the draftsman uses the same word or phrase in *similar context*, he must be presumed to intend it in each place to bear the same meaning. *VENKATARAMA AYYAR, J.* in the case of *SHAMRAO VISHNU PARULEKAR VS. DISTRICT MAGISTRATE, THANA* 1956 SCR 644 discussing the aforesaid rule has said "The rule of construction contended for is well settled but that is only one element in deciding what the true import of enactment is to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute."

225. In *MADRAS ELECTRIC SUPPLY CORPORATION LTD. (IN LIQUIDATION) VS. BOARLAND (INSPECTOR OF TAXES).* All England Law Reports, (1955) 1 Page 753, Lord Macdermott pointed out "the presumption that the same word is used in the same sense throughout the same enactment acknowledges the virtues of an orderly and consistent use of language, but it must yield to the requirements of the context and it is perhaps at its weakest when the word in question is of the kind that readily draws its precise import, its range of meaning, from its immediate setting or the nature of the subject with regard to which it is employed. But this Court has accepted that principle that the same word used at different places in the same clause of the same Section may not bear the same meaning at each place having regard to the context of its use. In fact in the case of *MAHARAJ SINGH vs. STATE OF U.P. & ORS.* (1977) 1 SCR 1072, the word `vest' used in the same Section of U.P. Jamindari Abolition and Land Reforms Act was interpreted to mean although the vesting in the State was absolute but the vesting in the Sabha was limited to possession and management. This case illustrates that even a word which is used more than once in sub-section of a section may connote and denote divergent things depending upon the context. Therefore, though on principle the contention of Dr. Rajiv Dhawan, learned senior counsel appearing for the appellant that the word `person' used in Section3(1)(a) of the Regulation can be given different meaning in the first part than the meaning to the same word given in the second part of regulation may not be, taken exception, but the question arises whether in the constitutional scheme under which the regulation has been framed and the object and purpose for which the regulation has been framed by the Governor, does it warrant to give a different meaning to the same word `person' in different part of the regulation. It may not be out of place to bear in mind the normal rule that general words in a statue must receive a general construction unless there is something in the act itself such as subject matter with which the act is dealing or the context in which the words are used to show the intention of the legislature that they must be given a restrictive or wider meaning.

226. Let us examine some of the authorities cited at the Bar in this regard. In *APPIN VS. RACE RELATIONS BOARD* (1974) 2 All ER 73, the word 'person' was defined to include a local authority in the context in which the word has been construed. In the case of *Printers (Mysore) Ltd. and anr. vs. Asstt. Commercial Tax Officer & Ors,* (supra) relied upon by Dr. Rajiv Dhawan, learned senior counsel, appearing for the appellant, the question for consideration was whether the expression 'goods' occurring in Section 8(3)(b) of the Central Sales Tax Act within the phrase 'for use by him in the manufacture or processing of goods for sale' does take within itself the newspaper and this Court answered the question agreeing with the view taken by the Madras and Kerala High Courts that the goods does include newspaper. This Court relied upon the ratio in *T.M. Kanias' case* (1968) 2 SCR 103 and *Pushpa Devi's case* (1990) 2 SCC 134 and held that it is well settled where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechanically applied. In *Dr. M. Ismail Faruqui & Ors. etc. etc. vs. Union of India and ors. etc. etc.* (1994) 6 SCC 360, on which Dr. Rajiv Dhawan relied very strongly, the majority view held the word 'vest' in Section 3 of the Act has shades taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting being limited in title as well as duration. It was further held the meaning of the word 'vest' used in Section 3 has to be determined in the light of the text of the statute and the purpose of its use. Ultimately the Court held while upholding the statute that the vesting of the disputed area in the Central Govt. by virtue of Section 3 of the Act is limited as a statutory receiver, with the duty for its management and administration according to Section 7 requiring maintenance of status quo therein in Sub Section (2) of Section 7 of the Act. Whereas the vesting of the adjacent area other than the disputed area acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The minority view, however, construing Section 3 and 4(1) held that the area includes the whole bundle movable and immovable property under the area specified in the Schedule and all other rights and interests therein or arising thereof and the whole bundle of property and right vests by reason of Section 4(2) in the Central Government free and discharged from all incumbrances and held the Act to be unconstitutional as the provisions of Sections 3, 4 and 8 were held to be invalid. The majority view of the Court expressed through Verma, J. held that a construction which a language of the statute can bear and promote larger national purpose must be preferred to a strict literal construction tending to promote factionalism and discord. But on examining the provisions of Section 3(1)(a) of the Regulation after its amendment I am unable to persuade myself to interpret the word 'person' used in Section 3(1)(a) of the regulation differently as in my view neither the context in which the word has been used calls for such an interpretation nor the interpretation of giving a literal meaning to the word would lead to any absurdity or unintended result not even it can be said to be promoting larger national purpose. In *P. Rami Reddy's case* (1988) Supp. 1 SCR 443 the validity of Section 3(1) of the amended regulation had been assailed and this Court tracing a short history of legislation came to hold that a legislation which in spirit sense and substance aims at restoration of the tribal land which originally belong to the tribals but which passed into the hands of non tribals cannot be characterised as unreasonable. The Court sustained the legislation on the ground that in the absence of protection economically stronger non tribals would in course of time devour of the available lands and wipe out the very identity of the tribals who cannot survive in the absence of the only source of livelihood they presently have. The Court also noticed the fact that under the pre-amended provisions of the regulation (Regulation 1 of 1959) transfer of immovable properties situated in the scheduled areas from a member of a Scheduled Tribe to non tribals without previous sanction of the State Government was prohibited. The amendment in question in the year 1970 was introduced to facilitate effective enforcement of the regulations of 1959. In other words, transfer of land in scheduled area in favour of non tribal became prohibited and non tribals holding land in the scheduled area were prohibited from transferring the land in favour of persons other than tribals and further the statutory presumption was introduced in regulation 3(1)(b) casting burden on the non tribals when he is found to be in possession of a land within the scheduled area to establish that he has not acquired the same from a scheduled tribe. In the aforesaid case the Court did not accept the argument advanced on behalf of the non-tribal that the expression 'land' has been used in its restricted sense in paragraph 5(2)(a) of Schedule V of the Constitution.

227. In the aforesaid *P.R. Reddy's case* (supra) the Court also took note of the earlier case in *Manchegowda & Ors. vs. State of Karnataka & Ors.* (1984) 3 SCC 301 where constitutional validity of a similar provision in respect of tribal area of Karnataka was under challenge and the Court upheld the constitutionality with an eye to preserve and protect the tribals in the land in the tribal areas. But in none of the aforesaid cases the question of power of the government to transfer the government land had come up for consideration. The Constitutional scheme embodied in Article 15(4) and Article 46 as well as the power conferred upon the Governor of the State under Schedule V of the Constitution are intended to preserve and protect the interest of the tribal in the tribal areas. It cannot be said by any stretch of imagination that all lands within the tribal areas vest in the tribal people. State is the paramount owner of lands and in the garb of preventing the exploitation of tribals from the non tribals so far as the lands belonging to the tribals are concerned the State cannot be denuded of its power to exploit resources which vest with the State. Judged from this angle there is no justification for interpreting the word 'person' in the first part of Section 3(1)(a) of the regulation to include State and, therefore, the prohibitions and restrictions contained in the regulation would not apply to the lands belonging to the State. The word 'person' used in the federal statute imposing tax on persons selling liquor came up for consideration in the case of *State of OHIO vs. Guy T. Helvering* 85 U.S. Supreme Court Reports 78 Law Edition 1307, it was held that the State engaging in the selling spiritual liquors is not immune from the excise tax imposed by the Federal Government on those engaging in such business, since in doing it is not performing any governmental function. It was also held that a State is embraced within the meaning of the term 'person' as used in a statute imposing an excise tax on persons selling liquor and the word person shall be construed to mean and include a partnership, association, company or corporation, as well as a natural person. In the case of *United States of America vs. Cooper Corporation et. al*, US Supreme Court Reports 85 Law Edition 1071 the word 'person' used in Section 7 of the Sherman Anti-trust Act came up for consideration and it was held that United States is not a person entitled to maintain an action for treble damages within the meaning of Section 7 of the Act. It has been held in the aforesaid case that it may be assumed, in the absence of any indication to the contrary, that the term 'person' when used in different sections of a statute, was employed throughout the statute in the same, and not in different senses. It was also held in the aforesaid case that it is not for the Courts to indulge in the business of policy making in the field of Federal anti-trust legislation, but their function ends with the endeavour to ascertain from the words used, construed in the light of the relevant material, what was in fact the intent of the Congress. In the case of *Union of India vs. Jubbi and Dunia etc.* [(1968) 1 SCR 447, the question that arose for consideration is whether under the provisions of Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 whether tenants under the Union of India as the land owner can acquire proprietary rights. Repelling the arguments advanced by the Union of India that the Act is not intended to be applicable to the lands to the Union this Court held that the object of the Act was to abolish big landed estate and alleviate the conditions of occupancy tenants by abolishing the proprietary rights of the land-owners in them and vesting such rights in the tenants and that being the object of the legislature it is hardly likely that it would make any discrimination between the State and the Citizens in the matter of the application of the Act. The ratio of all the aforesaid cases can be summed up thus ; though ordinarily a particular word used in a statute should be given the same meaning but it is permissible to construe the said word differently depending upon the object of the Act and the scheme of the act and the purpose sought to be achieved by the Act.

228. Coming now to the core question of interpretation of the word 'person' in regulation 3(1)(a) under the Amended Act if word 'person' used in Section 3(1)(a) is interpreted to mean to include the State then the expression 'whether or not such a person is a member of a Scheduled Tribe becomes meaningless as the State can never be a member of the Scheduled Tribe. If a literal meaning to the word 'person' is given in Section 3(1)(a) of the regulation then the prohibitions or restrictions contained therein would apply with full force to *inter se* transfer of land between the Scheduled Tribe and non-Scheduled Tribe and such an interpretation would subserve the main object of the legislation, namely, to save the tribal people from being exploited upon by the non-tribal people. If the constitutional scheme embodied in Articles 15(4) and 244 as well as in the Fifth Schedule is intended to save the tribal people from being exploited upon by the non-tribal both in relation to their lands as well as in the matter of taking loans from the moneylenders, there is no obligation to construe the word 'person' to include the State in the first part of Section 3(1)(a) of the regulation. In view of the history of legislation already traced in the earlier part of this judgment it is crystal clear that the prohibitions and restrictions never intended for the lands belonging to the government and the provisions both prior to the Constitution and under the Constitution are intended to deal with the tribal people separately so that better attention can be bestowed for their social and economical upliftment. It is with this objective Fifth Schedule of the Constitution conferred power on the Governor not only to indicate which laws made by the Parliament and the State legislature would apply within the Scheduled area and which laws would not apply, but further to make regulation for administration of the tribal areas for peace and good government in respect of a scheduled area. The matters indicated in Sub-Section (2) of Section 5 of Vth Schedule of the Constitution as well as the general power of the Governor to frame regulation contained in Sub-Section (1) of Section 5 of Vth Schedule, neither expressly nor by necessary implication prohibit transfer of government land in favour of a non-tribal within the scheduled area nor there is any mandate embodied in Article 15(4) or in Article 244 prohibiting the transfer of government land in favour of a non-Scheduled Tribe person within the scheduled area. In this perspective I do not find any force in the contention of Dr. Rajiv Dhawan to interpret the word 'person' in the first part of regulation 3(1)(a) to include the State and to interpret person in the second part of said Section 3(1)(a) of the regulation to mean an ordinary individual. In my considered opinion the expression 'person' used in Section 3(1)(a) of the regulation should have its natural meaning throughout the Section to mean 'natural person' and it does not include the State. In other words, the State is not denuded of its power in the matter of exploiting its mineral resources within the scheduled area by grant or renewal of lease even in favour of non-tribal persons and the restrictions and embargo contained in regulation 3(1)(a) is not applicable to the State is dealing with the land belonging to the State.

229. In this view of the matter, it must be held that the provisions of the Regulation have not been contravened by granting mining leases in favour of the Non-Scheduled Tribe person within the Schedule Area.

230. Notwithstanding my conclusion that the word 'person' occurring in Section 3(1) of the Regulation does not include 'State' and as such the mining leases granted in favour of different persons do not contravene the provisions of the Regulation but I am inclined to agree with the observations made by Brother Ramaswamy, J. that the lessees should be required to spend a part of the profit for the upliftment of the tribals and for maintaining the ecology in the Scheduled areas. Notwithstanding the constitutional obligation of the Governor to make special provision for ameliorating the economic status of the tribal people so as to assimilate them into the national main stream, nothing tangible appears to have been achieved in this regard even after 50 years of independence. The tribal people who constitute a substantial majority of the Indian population still spend their time in jungles and other inexcessible areas and sufficient legislative and executive measure has not been taken for improving the living conditions of these tribal people. Since the mining activities are being carried out mostly within the scheduled areas it is the duty of the State to see that a part of the profits earned by the lessees should be spent for ameliorating the living conditions of the tribals by the lessees themselves. It is in this context Brother Ramaswamy, J. has made some observations at pages 141 and 142 of the judgment which have my general concurrence but the said objective has to be achieved by appropriate legislation making it compulsory for the lessees within the tribal area to spend a portion of the income arising out of the mining business for the general upliftment of the living conditions of the tribal people. This should be in addition to the royalty and other cess under different legislations. The State may also consider the question of incorporating some provisions in the leases itself for achieving the aforesaid objectives.

GRANT/RENEWAL OF MINING LEASES AND CONTINUANCE OF THE MINING OPERATIONS WHETHER CONTRAVENES THE PROVISIONS OF THE CONSERVATION ACT?

231. Mr. Dhavan, the learned senior counsel for appellant contended that the Conservation Act has been enacted for conservation of forest and for matters connected therewith or ancillary or incidental thereto. Deforestation having caused ecological imbalance and having lead to environmental deterioration, with a view to checking further deforestation, the President promulgated the Forest (Conservation) Ordinance, 1980 on 25th October, 1980. The said Ordinance had made the prior approval of the Central Government necessary for deforestation of reserved forests or for use of forest land for non-forest purposes. The aforesaid Ordinance was replaced by the Forest (Conservation) Act, 1980 (No. 69 of 1980). Under Section 2 of the said Act which begins with a non-obstante clause to the effect "Notwithstanding anything contained in any other law for the time being in force in a State" no State Government except with the prior approval of the Central Government can direct that any forest land or any portion thereof could be used for any non-forest purposes. Explanation to Section 2 provides the meaning of the expression `non-forest purposes. Clause (b) of the said Explanation stipulates that any purpose other than re-afforestation would be a non-forest purpose. This being the position and mining activity being admittedly a non-forest purpose, the land in question could not have been permitted to be used for such non-forest purpose without the prior approval of the Central Government as required by Section 2 of the Conservation Act. The High Court according to the learned counsel, committed serious error in coming to the conclusion that the Conservation Act applies only to the reserved forests. Dr. Dhawan contended that the word `forest' must be given a wider meaning and should include all forests commonly known as forest and, therefore, even if the area on which mining activities are carried on by the respondent do not form a part of reserved forests in as much as no notification under Section 20 of the Indian Forest Act has been issued but all the same the provisions of the Forest (Conservation) Act would become applicable. The Conservation Act was further amended by Act 69 of 1988 with Presidential assent on 17.10.1988 and was published in the Gazette of India on 19.12.1988. By way of amendment Clause () was inserted to Section (2) which reads thus:

> (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

232. Dr. Dhawan, the learned counsel contended that in view of the aforesaid provision no lease could be granted or renewed after 19.12.1988 in favour of any authority without the prior approval of the Central

Government. Consequently the impugned leases must be held to be invalid as having contravened the provisions of Section 2 of the Conservation Act. The High Court in the impinged judgment, however, proceeded on the basis that the Conservation Act is applicable only to the reserved forests and does not apply to any other category of forests. Bearing in mind the objects sought to be achieved by the Conservation Act, we see no justification to give a restrictive meaning to the expression 'forest land' used in Section 2 of the Conservation Act. On the other hand the expression 'forest land' should be given an extended meaning to cover a track of land covered with trees, shrubs, vegetation and undergrowth under mingled with trees with pastures, be it of natural growth or man made forestation. This Court in the case of *SUPREME COURT MONITORING COMMITTEE V. MUSSORIE DEHRADUN DEV. ATY. & ORS.* Writ Petition (Civil) No. 749 of 1995 has held "that the term 'forest land' has not been defined under the Indian Forest Act, 1927 or the 1980 Act and, therefore, have to be understood as including an extensive track of land covered with trees and undergrowth sometimes intermingled with pasture, i.e. it will have to be understood in the broad dictionary sense. So understood any area which the State considers to be a forest and is governed under that law will also be subject to Section 2(ii) of the 1980 Act". Viewed in this light, any land which the State of U.P. by Notification declares to be a forest would be governed under Section (ii) of the 1980 Act. In *T.N. Godavarman Thirumulkpad v. Union of India & Ors.* in Writ Petition (Civil) No. 202 of 1995, the question relating to protection and conservation of the forests throughout the country was considered by this Court, the Court observed : "The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance: and therefore, the provisions made therein for the conservation of forests and for matters connected three with, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest : must be understood according to its dictionary meaning. This description covers all statutory recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term 'forest land', occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof." The Court also in the aforesaid case gave a general direction to the following effect : "In view of the meaning of the word 'forest' in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest'. In accordance with Section 2 of the Act all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith." In the case of *DIVISIONAL FOREST OFFICER AND OTHERS V. S. NAGESWARAMMA* - (1996) 6 scc 442, this Court has held that renewal of any mining lease could be done only in accordance with the law prevailing on the date of renewal and, therefore, if any renewal of mining lease has been done in violation of Section 2 of the Forest Conservation Act, in as much as no prior approval of the Central Government has been obtained, then such renewal is invalid and inoperative.

233. In view of the aforesaid legal position it is difficult to sustain the conclusion of the High Court in the impugned judgment that the Conservation Act applies only to a reserved forest. The said conclusion of the High Court therefore is set aside. Consequently, it must be held that no mining activities can continue on any forest land unless prior approval of the Central Government is obtained as required under Section 2 of the Conservation Act. Mr. Sudhir Chandra, learned counsel appearing for the respondents contended that he does not dispute the proposition that the expression 'forest land' in the Conservation Act should be given wider meaning and that mining activities over the forest land cannot continue unless prior approval of the Central Government has been obtained in accordance with Section 2 of the Conservation Act. He vehemently contended that the mining activities of the respondents are not over any forest land and the appellants have not produced any material from which this Court can come to the conclusion that it forms a part of the forest even going by the extended meaning of the term 'forest'. As has been stated earlier while narrating the pleadings of the parties, the private respondents have all along asserted that the mining activities in question and their leasehold area over which mining activities a continuing do not form a part of the forest. The State Government though has filed an affidavit but no assertion has been made as to whether the mining areas with which we are concerned in these appeals formed a part of the forest land and thereby required the previous approval of the Central Government for being used for mining purpose. On the other hand, the affidavit of the Government indicated that the mining leases in favour of the private respondents have been granted in accordance with the provisions of the Act and the Rules and there has been no contravention of the provisions of the Forest Conservation Act.

234. In this state of affairs even though we are of the considered opinion that the forest land in Section 2 of the Conservation Act would receive an extended meaning to include within its sweep an extensive track of land covered with trees, shrubs, vegetation and undergrowth undermingled with trees with pastures, be it of natural growth or man made forestation, yet unless and until it is so determined by the State Government that the mining activities of the respondents are being carried on over forest land it will not be possible to hold that the provisions of Section 2 of the Conservation Act gets attracted. In this view of the matter, the only possible direction which this Court can issue in the facts and circumstances of the present case is that the State of Andhra Pradesh through its officers of the Forest Department should immediately inspect the mining areas of the private respondents and find out whether the lands covered under the mining leases in question form a part of the forest land and if it comes to the conclusion that it is part and parcel of the forest land and no prior approval of the Central Government has been obtained for carrying out the mining activities then immediate direction should be issued to the respondents to stop the mining activities which would be in consonance with the general direction issued by this Court in GODAVARMAN'S case (supra). We are forced to issue such direction in the case in hand as on the materials produced before us by the appellant and in view of the denial in the counter-affidavit filed by the private respondents as well as the affidavit filed on behalf of the State of Andhra Pradesh, it has not been possible to come to the conclusion affirmatively that the land in question formed a part and parcel of the forest land.

Whether the leases can be said to be in violation of the Environment (Protection) Act, 1986.

235. The aforesaid Act (hereinafter referred to as the 'Environment Act') was enacted by the Parliament as it was thought necessary to protect and improve the environment and to prevent hazards to human beings, other living creatures, plants and property. A decision in this respect had been taken in June 1970 at the United Nations conference on the Human Environment held at Stockholm in June, 1972 and India had participated in the said Conference. The Objects and Reasons of the Act indicate that the decline in the environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems and, therefore, word community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nation Conference on Human Environment held in Stockholm in June, 1972. Though in India there were several legislations for environmental protection but a need for a general legislation became increasingly evident and, therefore, an enactment was passed. At the outset it may be made clear that in the Writ Petition filed before the High Court no complaint has been made with regard to the violation of the provisions of Environment Protection Act in the matter of granting lease or allowing the mining operation to be carried on. In this Court, however, Dr. Dhawan, learned senior counsel appearing for the appellant contended that the large scale mining operations within the tribal area pollutes the environment in the tribal area and, therefore, the Central Government is under a statutory obligation to protect the environment and coordinate the activities of the State Government in the matter of granting mining leases within the tribal area which must be subject to the provisions of the Environment Protection Act. And since no steps have been taken by the State Government in this regard, the leases must be held to be invalid. According to Dr. Rajiv Dhawan, learned senior counsel when several industries have been closed down by this Court on the ground that the existence of such industries are hazardous to human life and thereby violates Article 21 of the Constitution, the mining leases within the tribal areas must also be annulled. As the mining activities pollutes the tribal atmosphere, natural flora and fauna of the area and becomes hazardous to the human life within the tribal area, the said activities must be stopped. In support of this contention the learned counsel placed reliance on the decision of this Court in the case of *Tarun Bharat Singh, Alwar vs. Union of India & Others* - 1992 Supp. (2) SCC 448, *Subhash Kumar vs. State of Bihar & Ors.* (1991) 1 SCC 598. Mr. Sudhir Chandra appearing for the respondents contended that neither in the High Court nor in the Special Leave Petition in this Court basic facts have been averred to indicate how the mining lease in question infringe the provisions of the environmental laws. He further contended that the decisions relied upon by the learned counsel for the appellant cannot have any application particularly in the absence of any basic facts. Having examined the rival contentions on this score, we find sufficient force in the contention of Mr. Sudhir Chandra. It is undisputed that no averment has been made in the Writ Petition filed before the High Court alleging infraction of the environmental laws and necessarily, therefore, no argument had been advanced and the High Court had not considered this question at all. Even in the Special Leave Petition filed in this Court only infringement of the provisions of the

Conservation Act, the provisions of Scheduled Area Land Transfer Regulation and the provisions of Section 11(5) of the Mines and Minerals Regulation and Development Act have been alleged. In paragraph 2 of the Special Leave Petition the questions of law enumerated for consideration also do not contain any question on the violation of environmental laws. In the absence of any allegation and basic datas and consequently lack of opportunity to the respondents to prove the same, it would not be safe for this Court to embark upon an inquiry and come to a conclusion as to whether allowing the mining operations within the tribal area has resulted in the infringement of the Environment Protection Act. It would, therefore, be unnecessary to deal with the decisions cited by Dr. Rajiv Dhawan in support of his contention. The Environment Act consists of four Chapters with 26 Sections therein. Chapter I contains the definitions. Chapter II contains General power of the Central Government, Chapter III contains the prevention, control and abatement of environmental pollution, and Chapter IV contains misc. provisions. Environmental pollution has been defined in Section 2(c) to mean the presence in the environment of any environmental pollutant. "Environmental pollutant" has been defined in Section 2(b) to mean any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment. Section 7 prohibits persons carrying on industry from emission or discharge of environmental pollutants in excess of such standards, as may be prescribed. "Prescribed" has been defined in Section 2(g) means prescribed by rules made under this Act. Thus the Rules standard has to be indicated, permissible limit of emission environmental pollutant has to be indicated. Section 8 deals with the embargo on handling of hazardous substance. Section 10 confers power on the persons empowered by the Central Government to enter and inspect any of the premises for the purposes enumerated under Clauses (a) to (c) of Sub-section (1) of Section 10. Section 15 provides the penalty for contravention of the provisions of the Act and the rules made thereunder. Section 19 confers power on the Court to take cognizance of any offence on a complaint being made on that behalf. Section 24 is the overriding provisions of the Act notwithstanding anything inconsistent therewith contained in any enactment. The combined reading of the aforesaid provisions indicate that there must be necessary particulars to find out whether there has been any emission of the environmental pollutant in excess of the standard fixed under the rules and it is only then the question of complaining before a court and taking cognizance of the same would arise. If the averments in the Special Leave Petition are examined from the aforesaid point it would be seen that there is no iota of material to come to the conclusion that on account of the mining operations conducted by the respondents there has been any emission of environmental pollutant in excess of the standard prescribed under the Rules, nor it is possible to hold that there has been any environmental pollution on account of carrying on the mining operations. In our considered opinion, on the facts alleged it is not possible to embark upon the enquiry as to whether the grant of leases within the tribal area are in violation of the provisions of Environment Protection Act nor the leases can be annulled on that score. Contention of Dr. Dhawan on this score accordingly must be rejected.

Whether the leases in question are contrary to the provisions of the Mines and Minerals Regulation and Development Act (for short 'MMRD Act')

236. Dr. Dhawan, learned counsel appearing for the appellant contended that in view of Section 11(5) of the MMRD Act as amended no mining leases can be governed in favour of any person who is not a member of

Scheduled Tribe. Section 11(5) of the MMRD Act reads, thus:

> "Notwithstanding anything contained in this Act no prospecting licence or mining lease shall be granted in the Scheduled Areas to any person who is not a member of the Scheduled Tribe, provided that this sub-section shall not apply to an undertaking owned or controlled by the State or Central Government or to a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964, which is composed of members of Scheduled Tribes".

237. There cannot be any dispute that on and after coming into force Section 11(5) of the MMRD Act no mining leases can be granted or renewed within the Scheduled area to any person who is not a member of Scheduled Tribe within the State of Andhra Pradesh. The only exception being as contained in the proviso, namely, an undertaking owned or controlled by the State or Central Government or a society registered or deemed to be registered under Andhra Pradesh Co-operative Societies Act which is composed of members of Scheduled Tribes are excluded from the rigours of Sub-section (5) of Section 11. Therefore, after 1991 if any mining lease is granted in favour of any non-Scheduled Tribe person then the said lease would be void being repugnant to Section 11(5) of the Act but the said provision does not affect the subsisting leases and, therefore, the leases in favour of the respondents cannot be said to be invalid on the ground of infraction of Section 11(5) of the MMRD Act. The provisions is prospective in operation and would be applicable to any or renewal of a lease subsequent to the enactment of Section 11(5) of the MMRD Act. The leases of the respondents being prior to the aforesaid enactment these are not hit by the said provisions and therefore. Dr. Dhawan's contention on this score cannot be sustained.

238. My conclusions on different questions, as discussed above, are summed up as under :-

1. Under the British rule though steps had been taken to make provision for special administration of the tribal areas but there had been no prohibition for transfer of government land in favour of a non-tribal within the scheduled area.
2. Under different laws and regulations operating in different tribal areas prior to coming into force of the Constitution there was restriction in relation to transfer of lands belonging to the tribals in favour of a non-tribal within the scheduled area but no such restriction was there so far as the government land was concerned.
3. The legislative history and the debates in the Constituent Assembly culminating in engrafting of Schedule V of the Constitution conferring power on the Governor to make regulation for administration of tribal area were all aimed to prevent the tribals from exploitation of non-tribals and the prohibitions/restrictions were all in relation to the transfer of lands belonging to the tribals in favour of non-tribals and it never intended to have any such prohibition in relation to government land.
4. A combined reading of Article 244 and Schedule V of the Constitution would indicate that there is no constitutional obligation on the Governor to make regulation prohibiting transfer of government land in favour of a non-tribal within the schedule area.
5. The word 'person' used in Section 3(1)(a) of the Andhra Pradesh Schedule Area Land Transfer Regulation as amended in 1970 has to be construed to convey the same meaning throughout the Section and the said expression does not include the State Government.
6. Neither the legislative history nor the object with which special power has been

conferred on the Governor under Fifth Schedule to the Constitution make it necessary to construe the word 'person' in the first part of Section 3(1)(a) differently from the rest part of the Section so as to include State Government within the said expression.

7. Though under Section 2 of the Forest Conservation Act use of any forest land for any non-forest purpose is prohibited without the prior consent of the Central Government and as such mining activities being a non-forest purpose would attract the mischief of said Section 2 of the Conservation Act, but in the absence of any materials to conclusively come to the conclusion that the land over which the respondents are carrying on the mining activities form a part of the forest land, it would not be proper for this Court to issue any direction prohibiting the mining activities. At the same time it would be proper to direct the State of Andhra Pradesh through its Forest Department to examine whether the mining activities are being carried on over the forest land and if it comes to the conclusion that the lands do form a part of the forest land then immediate steps should be taken prohibiting continuance of the mining activities until the Central Government in exercise of power under Section 2 agrees to the same, and we accordingly so direct.

8. The petitioner has not been able to make out any case of violation of the provisions of the Environment Protection Act in the case in hand.

9. Section 11(5) of the MMRD Act being prospective in nature will have no application to the existing mining leases and, therefore, the leases of the respondents' can't be annulled on that score.

239. The appeals are disposed of with the aforesaid observations and directions.

M/S. HYDERABAD ABRASIVES & MINERALS (P) LTD. REPRESENTED BY SHRI M.V.S. SUBRAMANIUM, MANAGING DIRECTOR
VS
STATE OF ANDHRA PRADESH & ORS.

Pattanaik, J.—Leave granted.

241. This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court dated 27.8.1993 in writ petition No. 3734 of 1993. The present appellant was respondent No.6 before the High Court. SAKTI, a voluntary social organisation for the upliftment of tribals in East Godavari District filed the writ petition in the Andhra Pradesh High Court praying therein that the mining activities which are carried on by the respondents 6 to 10 in the said writ petition should be immediately stopped as the grant of mining leases in their favour is in contravention of Section 3 of the Andhra Pradesh Scheduled Areas Land, Transfer Regulation, 1959 (hereinafter referred to as the 'Regulation') as well as Section 2 of the Forest (Conservation) Act, 1980 (hereinafter referred to as the 'Conservation Act'). It was averred in the writ petition that the villages where the mining activities are being carried on were notified as protected forests under Section 24 of the Andhra Pradesh Forest Act, 1967 with effect from 8.9.1975 and within the said forest area it is not permissible to continue any mining activity in view of the provisions of the Conservation Act which prohibits user of forest land for non-forest purpose.

242. Respondents 1 to 4 before the High Court, who were the public officers of the State Government supported the case of the petitioner and took the stand that a joint inspection report had been conducted after surveying the area over which the mining activities are being carried on by the respondents 6 to 10 and the said report reveals that mining leases have been granted over the forest area which is prohibited under the

Conservation Act without prior approval of the Central Government.

243. Respondent No.6 the present appellant took the stand that the lease having been granted much prior to the area in question was included as a protected forest, the embargo contained in the provisions of the Conservation Act will not apply and in this connection reliance was placed on the decision of this Court in the case of *STATE OF BIHAR Vs. BANSHI RAM,* (1995) 3 SCC 634. It was also contended that Section 3 of the Regulation has no application to a transfer by the Government in respect of its land in favour of a non-tribal and the word 'person' in Section 3 of the said Regulation will not include the Government. It is not necessary for us to examine the stand taken by other private respondents, namely respondents 7 to 10.

244. The High Court by the impugned judgment came to the conclusion that the transfer of any land in scheduled area to a non-tribal is void under Section 3 of the Regulation, and therefore, the lease in favour of respondent no.6 within the scheduled area is void. The High Court came to the conclusion that the word 'person' in Section 3 of the Regulation includes the Government, and therefore, leases granted by the State Government in scheduled area to a non-tribal is void. On the question of applicability of the Conservation Act the High Court also relied upon the decision of this Court in the Banshi Ram's case (supra) and came to the conclusion that for grant of mining lease in a protected forest area for non-tribal purpose the prior approval of the Central Government is mandatory and since the Government did not obtain the approval of the Central Government, leases are in contravention of Section 2 of the Forest Conservation Act, 1980. Having considered the judgment of this Court in *AMBIKA QUARRY WORKS Vs. STATE OF GUJARAT* (1987) 1 SCC 213 and taking into account the fact that respondent no.6 had completed the mining operation over 42 acres the High Court permitted the said respondent no.6 to remove the dug up mineral in the presence of Joint Collector of the District, Assistant Director of Mines and Geology and the District Surveyor of Forests. Respondent No.6, the present appellant was prohibited from mining operation in the area with the aforesaid conclusion and thus the appeal by special leave.

245. Learned counsel for the appellant argued with vehemence that the conclusion of the High Court that the word 'person' in Regulation 3(1)(a) includes the State Government and the transfer of any land within the scheduled area in favour of a non-tribal is null and void is wholly erroneous as the embargo in question is applicable in respect of transfer of land belonging to the Scheduled Castes and Scheduled Tribes and not to land belonging to the State Government. The learned counsel also urged that the restrictions and prohibitions in the Conservation Act will have no application to an existing lease and the lease in favour of the appellant having been granted much prior to the coming into force of the Conservation Act, the High Court committed error in holding that the lease are in violation of the Conservation Act. Both these questions have been considered in detail by us in Civil Appeal Nos. — arising out of S.L.P. @ Nos. 17080-81 of 1995 and for the reasons given therein and in view of the conclusion in the said appeals to the effect that the word 'person' used in Section 3(1)(a) of the Regulation does not include the State Government, and therefore, the prohibitions contained in the said Regulation with regard to transfer of land in favour of a non-tribal will not apply to the transfer of land made by the Government for the purpose of mining lease, the conclusion of the High Court on this score is erroneous. But so far as the question of applicability of the Conservation

Act is concerned, in view of our conclusion on the said question in the appeals arising out of SLPs referred to earlier (Samatha Vs. State of A.P. & Ors.) the conclusion of the High Court in the impugned judgment has to be sustained. In view of the inquiry report and the stand taken by the State Officials the land over which the appellant was permitted to carry on mining activities is a forest land and before grant of lease in favour of the appellant no approval of the Central Government has been taken. It is no doubt true that Conservation Act came into force much later than the grant of mining lease in favour of the appellant, but in view of the general directions issued by this Court in *T.N. GODAVARMAN THIRUMULKPAD Vs. UNION OF INDIA & ORS.* in Writ Petition No. 202 of 1995, the mining activities being a user of the forest land for non-forest purpose has to be stopped and in case it is intended to continue the mining activities the same can be done only after referring the matter to the appropriate authority of the Central Government and getting the permission of the same. In this view of the matter the conclusion of the High Court in the impugned judgment so far as violation of Conservation Act is concerned is unexceptionable, and therefore, the said conclusion is upheld. Necessarily, therefore, the ultimate direction given by the High Court remains unaffected notwithstanding the conclusion of the High Court on the first question with regard to the applicability of the provisions of the Regulation having been reversed by us. In the premises as aforesaid this appeal is dismissed but in the circumstances there will be no order as to costs.

SCALE (PIL) 1981-97 1214
DRUG ACTION FORUM AND ORS *Petitioners*
VS
UNION OF INDIA AND ORS. *Respondents*
CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — MEDICARE — BANNED DRUGS — Directions given regarding existing stock.

1. The learned Additional Solicitor General informs us that the Core Group has indicated that the period of three months would be adequate for completion of the task by them as required by the earlier order dated 12th February, 1997. Accordingly, we request the Core Group to complete the task as expeditiously as possible and latest by the end of 31st May, 1997. The learned Additional Solicitor General will give this intimation to the Core Group through its Convenor.

2. We are also informed by learned counsel that the particulars of the existing stock of the drugs manufactured prior to 17th December, 1996 as required by the earlier order dated 12th February, 1997 have been furnished by the manufacturers and the same is in the process of certification by the competent authorities. The learned Additional Solicitor General also states on instructions that there is no objection by the concerned authorities to the export of fixed dose combinations of Analgin known by the brand names - Baralgan (Baralgin), Spasgan and Trigan Injection & Trigan E Tablets - which have been manufactured by some of the companies prior to 17th December, 1996 to some foreign countries wherein consumption

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Order dated February 24, 1997 in WP(C) No. 698/93. [1997(4) SCALE (SP) 1] of the same is not banned of the quantity duly certified by the competent authorities; and that the Central Government through its agencies will monitor strict compliance of the same ensuring that no part of such stock of these banned drugs would be utilised for internal consumption within the country. In view of this statement of the learned Additional Solicitor General, we allow these manufacturers to approach the concerned authorities to allow them to expert the certified stock of such drugs manufactured prior to 17th December, 1996 to the foreign countries wherein consumption of the same is not banned in accordance with the Government's Export Policy. The Central Government would be responsible for ensuring that the certified stock of these drugs is utilized only in this matter.

3. List on 14th April, 1997.

SCALE (PIL) 1981-97 1215
M.C. MEHTA *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, K. RAMASWAMY AND N. VENKATACHALA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Directions given.

1. The Additional Director, Ministry of Environment and forests, Government of India, Dr. Shyam Lal, had filed a detailed affidavit dated 7.2.1994 along with two annexures indicating the schedule of supply of unleaded petrol to metroplitan cities of the country and stated that the 1995 - Policy Note focusing on the air pollution in metroplitan cities was prepared which covered various issues of control and abatement of pollution in metropolitan cities including that from automobiles. It was also stated that the said note was approved by the Committee of Secretaries and various measures were identified to be taken by different ministries. The details of those measures were given in Annexure - II to the affidavit. In Annexure - I appended to the affidavit, the possibility of moving unleaded petrol from BRPL to Delhi so that about 10 per cent of the demand of unleaded petrol in Delhi could be met was indicated. There was also a note to the effect that for the balance 90 per cent of Delhi supplies the level of lead content could be brought down to 0.15 g/l by 30th April, 1994 instead of the earlier commitment of December 1994. We enquired of the learned counsel for the Union of India regarding the progress made in this behalf since more than three months from April 1994 had elapsed. The learned counsel for the Union of India, Shri Goswami, was unable to enlighten us on the progress made in this behalf.

2. It is most unfortunate that the concerned officers have not thought it necessary to instruct the counsel about the progress of the matters as per the time schedule, they themselves had evolved. In fact, this Court accepted the statements made in the affidavit at their face value and did not intervene with the time schedule so that the concerned ministry is able to achieve the targets as per the time schedule worked out by them. This Court had hoped that a solemn

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Order dated August 12, 1994 in W.P. (C) No. 13029/85 with W.P. (C) No. 9300/82 (Kanwar Lal Gupta (deceased) vs Secretary, Deptt. of Environment & Ors.) [1997(4) SCALE (SP) 4] statement made before this Court by a high ranking officer of the level of Additional director of Ministry of Environment in a sworn affidavit will be strictly and scrupulously adhered to. Mr. Goswami, the learned Standing Counsel for the Union of India, and Mr. Reddy, learned A.S.G., who appeared on the last occasion and whom we called to Court today, state that a week's time may be given to enable this Court to place on record the progress made as per the affidavit of Dr. Shyam Lal. Unfortunately, no responsible officer from the concerned ministry has bothered to attend the Court to inform the learned counsel of the progress. It is a sad commentary that such a casual approach is being shown to a matter of deep concern to this Court as well as the citizens of the country. The extent of pollution in Delhi and its consequences are well-known to every one. We do hope that on the next occasion senior officers of the Department of Environment will be before this Court to inform this Court of the action taken on the time schedule indicated in the annexures to the affidavit of Dr. Shyam Lal and we will not be compelled to take action for non-compliance of the solemn assurances given to this Court.

3. Let the matters come up on 19.8.1994.

SCALE (PIL) 1981-97 1216

M.C. MEHTA *Petitioner*

VS

U.O.I. & ORS. *Respondents*

CORAM: A.M. AHMADI AND N.P. SINGH, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. It appears that during the pendency of the present proceedings, the Committee headed by Mr. Justice Saikia has submitted as many as 13 interim reports making various recommendations. Mr. Goswami the learned senior Counsel appearing, on behalf of the Ministry of Environment in the Government of India states that the ministry would like to submit its response to the various recommendations made by the Committee because it has reservations in regard to certain recommendations. It would, therefore, like the Ministry of Environment to prepare a Table, Column (1) whereof would state the number of the interim report, column (2) could contain the recommendations made by the Committee, Column (3) would state briefly the response of the Ministry of Environment and Column (4) would be reserved for remarks by the petitioner M.C. Mehta. The table may be prepared within six weeks from today and copy served on Mr. M.C. Mehta. Mr. Mehta will complete Column (4) of the Table with his remarks and present the same to the Court so that the Court is able to appreciate the points of view of the Committee, the Ministry of Environment as well as Mr. M.C. Mehta, the petitioner herein. The counsel for the Union of India will furnish to Mr. Mehta sufficient number of copies of the Table to enable him to complete the fourth column and present the table to the

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Order dated May 13, 1993 in W.P. (C) No. 13039/05 with W.P. (C) No. 9300/82. (Kanwir Lal Gupta (deceased) vs Secretary, Deptt. of Environment & Ors.) [1997(4) SCALE (SP) 3]

Court as well as return completed copies to the learned counsel for the Union of India. This he may do within four weeks after he has received the Table from the counsel for the Union of India. We do hope that having regard to the seriousness of the problem of environmental pollution every party will show a sence of urgency in the matter and will strictly adhere to the time-schedule so that this Court may to able to deal with the matter effectively immediately after the summer vacation.

2. Let the petitions come up in the first week of August, 1995.

SCALE (PIL) 1981-97 1217

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, K. RAMASWAMY AND N. VENKATACHALA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. Pursuant to our order dated 12.8.94 the Additional Director in the Ministry of Environment and Forest, Government of India, has filed an affidavit indicating the action taken in response to the earlier order passed by this Court from time to time. According to this affidavit it is stated that introduction of petrol with a maximum lead content of 0.15 g/1 at all outlets in four Metropolitan Cities of Delhi, Bombay, Calcutta and Madras by December, 1994 has since been implemented. It is stated that the lead content petrol sold in all the retail outlets of the aforesaid four metros now has a maximum lead content of 0.15 g/1 since June, 1994. In view of this statement we find that the first part of the direction is complied with. It was also stated earlier in point of time and re-stated in the latest affidavit that by December, 1996 the entire country would be supplied petrol with a maximum lead content of 0.15 g/1. Now that it has been possible to supply petrol with a maximum lead content of 0.15 g/1 in four metros, we think that the time is ripe to extend the scheme for supply of petrol with that lead content to other areas in the country. Since in the estimation of the concerned Ministry this may be possible by December, 1996 we accept the time limit instead of rushing them and direct that the concerned Ministry will ensure the supply of petrol with a maximum lead content of 0.15 g/1 in the entire country by December, 1996. As far as lead free petrol is concerned the deponent states that it was decided to introduce the same from April, 1995 in a few selected retail outlets in the aforesaid four metros to cater to the requirement of new petrol driven vehicle fitted with catalytic converters. New vehicles fitted with catalytic converters should be available by April, 1995. We, therefore, direct that lead-free petrol should be supplied at few selected outlets in the aforesaid four metros latest by April, 1995.

2. Mr. Mehta then drew our attention to a note on introduction of lead free petrol appended to office memorandum dated 8.5.94 of the Ministry of Environment and Forest. We find therefrom that certain major decisions were taken by the said Ministry in

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Order dated October 21, 1994 in W.P. (C) No. 13029 of 1985 with W.P. (C) No. 9300 of 1962 (Kanwar lal Gupta vs Secretary, Deptt. of Environment & Ors.) [1997(4) SCALE (SP) 5] consultation with all those who were present at the meeting of 17th June, 1994. A copy of the note indicating the decisions taken may be supplied by Mr. Mehta to Mr. Reddy since he had not taken necessary instructions in that behalf. That may be done before 7th November, 1994 on which date this matter will come up. In the meantime, it must be realised that the manufacturer must also be put to notice that they would have to equip the new vehicles with catalytic converters so that they can be plied on lead-free petrol.

3. On an earlier occasion when these matters came up before this Court it was suggested that to begin with of Government vehicles and public undertaking vehicles including public transport vehicles could be equipped with CNG cylinders with necessary modification in the vehicles to avoid pollution which is hazardous to the health of the people living in highly polluted cities like Delhi and the other metros in the country. Mr. Reddy states that he would require some further time to obtain instructions in that behalf. At the same time Mr. Reddy is aware that certain vehicles in the city were converted and equipped with CNG kits and the cost thereof was not abnormal. Since Mr. Reddy has not received complete instructions in that behalf we do not pass orders in that connection today but would postpone the matter to 7.11.94. By that date the instructions on that point and in all the related issues should be complete so that we may be able to give appropriate directions in the connection also. Let the matter come up on 7th November, 1994.

SCALE (PIL) 1981-97 1218

M.C. MEHTA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI CJI., K.S. PARIPOORNAN AND G.T. NANAVATI, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. Pursuant to this Court's order passed on the earlier occasion, arrangements have been made to supply unleaded petrol with effect from 1st April, 1995 through few selected retail outlets in the four metropolitan cities of Delhi, Bombay, Calcutta and Madras. In all 154 retail outlets in the aforesaid four cities are proposed to be provided for to begin with and there would be a periodical increase in the number of outlets depending on the demand situation yearwise from 1995-96 and onwards. The Ministry of Petroleum and Natural Gas has assured that the number of retail outlets selling unleaded petrol would be progressively increased according to the demand. So far as the suggestion made in the order of 21st October, 1994 is concerned, we are told that the Government of India has obtained the views of the various departments and in all 37 departments have responded. We are further told that there are certain inherent problems in carrying out the suggestion of converting all Government vehicles to CNG, but the details of the problems have not been indicated. As a first step, cars of Government offices located in the proximity of existing five CNG retail outlets could be converted in a phased manner. We would like to know the

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Order dated March 28, 1995 in W.P. (C) Nos. 13029 of 1985 with WP (C) No. 9300/82. [1997(4) SCALE (SP) 6] details of the problems so that we are able to appreciate the same and apply our mind with a view to determining whether or not the proposal to convert all Government vehicles to CNG can be implemented without loss of time. We feel that this step would help in reducing the vehicular pollution in this city to some extent. Additionally, the supply of lead free petrol with effect from 1st April, 1995 would also contribute in the reduction of the pollution in this city. But, much more has to be done. Learned counsel appearing on behalf of the Industries has also assured that sufficient number of cars, which could run on unleaded petrol, would be sold in the four metropolitan cities so that there is sufficient demand for unleaded petrol. In order that we may be apprised of the problem in regard to the conversion to CNG, we would like that the concerned officer from the concerned Ministry should be present in Court tomorrow to enable us to pass further orders.

2. Let the matter come up tomorrow.

SCALE (PIL) 1981-97 1219
M.C. MEHTA, ETC. *Petitioner*

VS

UNION OF INDIA& ORS., ETC. *Respondents*

CORAM: A.M. AHMADI, CJI AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. Mr. CVS Rao, counsel for the UOI, is present and he has been informed that the Secretary of the concerned Departments should give a Report as to the further development in regard to the opening up of lead-free petrol outlets, reduction in the lead content in petrol all over the country and sulphur in the diesel as well as the installation of CNG stations and kits.

2. Adjourned to 14.2.1996.

Order dated February 9, 1996 in W.P. (C) No. 13029/85 with W.P. (C) No. 9300/82 [1997(4) SCALE (SP)7]

SCALE (PIL) 1981-97 1219
M.C. MEHTA, ETC. *Petitioners*

VS

UNION OF INDIA & ORS., ETC. *Respondents*

CORAM: A.M. AHMADI CJI., S.P. BHARUCHA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. By our order dated *21.10.94* we had taken note of the decisions taken by the Ministry of Environment and Forests in regard to the supply of lead free petrol and incidental matters. Thereafter by a subsequent order dated *28.3.95* after dealing with the question regarding the total number of outlets supplying lead free petrol to be set up in the

Order dated April 26, 1996 in W.P. (C) No. 13029/85 with W.P. (C) No. 9300/82. [1997(4) SCALE (SP) 7]

four Metropolitan and surrounding arrears, we pursued the suggestion made on *21.10.94* in regard to the conversion of Government Cars belonging to various departments to CNG with a view to reducing pollution. In regard to that suggestion we were told that the Government of India had obtained views of various departments and in all 37 departments had responded. We do not know how many departments did not respond. We were at that time told that there were certain inherent difficulties in converting all Government vehicles to CNG but the details of the problem had not been indicated. As a first step it was thought that government vehicles located in the proximity of existing 5 CNG retail outlets could switch over to CNG. We had also desired to know the details of the problems in regard to the conversion of Government vehicles to CNG. In the submissions made by Mr. Mehta in this connection he had produced Annexure 'I' (page 441) which indicated that the question of conversion of Government vehicles was considered by the Ministry and it was felt that since the time needed for conversion is hardly two or three days per car the Government vehicles of the 37 departments which had responded, totaling 1260, could be converted in a phased manner at the rate of 30 cars per month. This schedule has, however, not been adhered to and, therefore, it has become necessary for us to take a serious view of the matter since the Government has not taken steps to keep to that schedule even though the Court had accepted their estimate. From the affidavit that has been filed in this connection we find that only 97 cars have been thus far converted whereas by now according to the schedule 720 cars should have completed the process of conversion. By our order dated 14.2.96 we referred to the earlier orders and thereafter noted the fact that the initial difficulty of securing the kit no more stares in our face. Our attention was drawn to a letter dated 16.1.96 which gave the indication that the existing cars could be equipped with CNG kit. The difficulty of procuring the kit therefore was totally eliminated. The second difficulty regarding the setting up of a Mother Station for the compressor has also been attended to because the DDA has now provided the land for the Mother Compressor. We were also told today in the course of the hearing that the cost of conversion to the CNG is higher than the cost of equipping the old vehicles with a catalytic convertor. *It would be for the Government to take a decision whether the cars can be fitted with catalytic convertors or CNG depending on the age of the vehicle, its condition etc. In the circumstances stated above we direct as follows.*

2. *All the concerned Ministries of the Government of India and offices under those Ministries in Delhi will have their old cars fitted with catalytic convertors or with CNG kits latest by the end of August 1996.* If cars cannot be fitted with a catalytic convertor or a CNG kit on account of weak compression or for any other reason they should be scrapped. Needless to say that the Court had shown indulgence in the matter of fitting the cars with CNG kits and the Government was expected to complete this exercise by the end of April, 1996 according to their own schedule in relation to 720 cars but instead they have done so for a meagre 97 cars. All these 720 cars should have by this date been equipped with CNG kits. Since we were told that catalytic convertor would be more economical, we have left the option with the concerned Ministry. We have also been told that these catalytic convertors are easily available. As regards the other 540 cars out of 1260 which were to be equipped with CNG kits falling within phase 3, we were told that the exercise would be completed by October, 1996. We direct that they either fit them with CNG kits or catalytic convertors by that date and if they cannot be so fitted they should be scrapped. The basic idea is that the Government of India should be a model user of vehicles so that others may follow suit. If the total number of cars used by the Ministries and Offices subordinate thereto are more than 1260, the additional cars shall also be subject to the outer limit of October, 1996. *We must impress upon the Secretary, Ministry of Surface Transport as well as the Secretary, MInistry of Environment to co-ordinate and ensure that the time schedule is strictly complied with.* If there is any delay or breach in the time schedule the concerned Secretaries of *the two Ministries will be held responsible for the same.* The learned ASG appearing on behalf of the Union of India will communicate this order to both the Secretaries or their successors in office to ensure compliance. *We will not brook any delay.*

3. Mr. Sorabjee appearing for the Association of India Automobiles Manufacturers says that any assistance needed in this behalf from the manufacturers will be readily available. Let the matter come up immediately after vacation.

SCALE (PIL) 1981-97 1221

M.C. MEHTA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI CJI, SUJATA V. MANOHAR AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. The question regarding the prevention of pollution caused by two wheelers and three wheelers was discussed on an earlier occasion. The Association of Automobiles Manufactures had then indicated that a converter would be necessary to avoid pollution caused by leaded petrol. However, on a further examination they have now stated in the affidavit filed in this behalf that even without a catalytic converter it would be possible to avoid pollution caused by leaded petrol if the users/owners and drivers of two wheelers and three wheelers switch over to unleaded petrol. We are given to understand that no change in the mechanism of the vehicles is required for this change over and the vehicles can run on unleaded petrol without any difficulty whatsoever. This has been specifically adverted to in their affidavit dated 9th September, 1996.

2. We have enquired of Mr. P.P. Malhotra, the learned counsel for the Union of India and he too confirms that the two wheelers and three wheelers can be run on unleaded petrol without there being any need or requirement to change the engine or the mechanism of the said vehicles. We have also been told that the price of the leaded petrol and the unleaded petrol is the same and that there are sufficient outlets in the Metropolis and the quantity of unleaded petrol supply to the outlets is also sufficient to cater to the needs of the users/owners of scooters/mopeds/motor cycles and auto rickshaws. On an earlier occasion we were informed that the total number of two wheelers in the city of Delhi is around 15.88 lakhs and the total number of three wheelers is a little less than

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Order dated September 23, 1996 in W.P. (C) No. 13029/85 with W.P. (C) No. 9300/82. [1997(4) SCALE (SP) 9]

75.000. Conscious of the requirement to cater to the needs of these number of vehicles in Delhi alone, we enquired of learned counsel for the Union of India whether there are sufficient outlets and if yes, whether the quantity of unleaded petrol supplied to these outlets would be sufficient to cater to the additional need of petrol that would be required by these two wheelers and three wheelers. We were assured that the number of outlets is sufficient and the quantity of unleaded petrol supplied to them would also be sufficient to take this additional load of supply for two wheelers and three wheelers. In view of this statement made before us we do not see any difficulty in issuing a direction to the users/owners of these two wheelers and three wheelers to change over to unleaded petrol.

3. At this stage Mr. Malhotra, learned counsel for the Union of India, states that when he answered the question regarding the quantity of supply in the affirmative the impression was that this direction would apply to new vehicles already on road. We do not see any reason why the large number of vehicles which are already on the road should not be directed to switch over to unleaded petrol because they are the ones that are responsible for the present level of vehicular pollution in the Metropolitan cities in India. However, Mr. Malhotra states that it would be the endeavour of the Union of India to ensure adequate supply but he needs sometime to obtain instructions in this behalf.

4. Let these matters be listed after a week to enable Mr. Malhotra to make positive statement in this behalf.

SCALE (PIL) 1981-97 1222
M.C. MEHTA *Petitioners*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: A.M. AHMADI, CJI AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. On the last occasion when this matter came up for hearing it was suggested on behalf of the manufacturers of two/three wheelers that it would be easy to switch over to lead free petrol as that would not require any change in the engine of two/three wheelers. We had asked the Government to examine this proposal. Mr. Reddy, the learned ASG has drawn our attention to a Report of the House of Commons, which had examined this suggestion and they observed:

> We are firmly of the view that, as a general proposition, catalytic converters used with unleaded petrol potentially offer the best technological approach to reducing emissions, provided that the equipment is in good working order”.

Proceeding further that body observed:

> We are sufficiently alarmed by the evidence about the environmental impact of using unleaded petrol in non-catalysed cars that we urge the Government to carry out an immediate investigation into whether unleaded petrol should continue to be used in cars not fitted with a catalytic converter and we recommend

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Order dated October 7, 1996 in W.P. (C) No. 13029/85 (with W.P. (C) No. 9300/92). [1997(4) SCALE (SP) 10] that the findings should be made public as soon as possible".

2. The issue was also examined by the Central Pollution Control Board and that body also came to the conclusion that the proposal to use unleaded petrol in two/three wheelers will help in the control of lead pollution. However, along side it, it is also desirable to use catalytic converters to contain the emission of volatile organic compounds including benzene and other aromatics. It therefore, recommends that along with unleaded petrol such vehicle should also be fitted with catalytic converters, so that emissions of all harmful pollutants are minimized. In view of this report of the Central Pollution Control Board which falls with the observations of the House of Commons made in the Session of 1993-94, we are prima facie of the view that the changeover to lead free petrol without a catalytic converter would not be environment friendly. The issue, therefore, requires further examination with a view to ascertaining if it would be possible to switch over to lead free petrol and if catalytic converters could be provided at a reasonable price to existing as well as vehicles to be manufactured hereafter.

3. The Saikia Committee, while dealing with the question regarding pollution caused by two/three wheelers in its 25th by-monthly report forwarded to this Court considered the option of use of propane by such vehicles to reduce pollution caused by them. Of course this report is not a unanimous report because we find that out of 5 members, two did not sign the report. We enquired of the learned ASG if the Government had examined the proposal of use of propane in two/three wheelers and he stated that there the problem is of availability and if Propane is diverted for use by such vehicles, there may be shortage as the same is also used for the manufacture of LPG which is largely in demand for domestic purposes. We would like the Union of India to file an affidavit on the question of use of propane in two/three wheelers and if the quantity available in the country is not sufficient and even if sufficient it cannot be diverted in sufficient quantity for use by vehicles, the feasibility of importing the same if the import is ultimately likely to work out as cost effective. We would also like the Government of India to examine the report submitted by the Saikia Committee referred to earlier to collect and collate the information on this proposal and place it before this Court. This may be done on the premise that the alternative suggested by the Commission of the use of propane is environment friendly alternative. if there is any doubt in that behalf the same may be communicated to this Court separately but that should not hold up the examination of the proposal from the point of view of it being environment friendly. Let the affidavit be filed within four weeks.

4. On the question of switching over to *(sic)* converters so far as Government cars are concerned we had granted time up to the end of October, 1996. The learned ASG informs us that out of the total 1954 vehicles used by the Government in different offices 419 have been converted to CNG made and 139 have been fitted with catalytic converters. 275 vehicles have already been scrapped. He further states that after this Court's order the Government came to the conclusion that between the two options of CNG and catalytic converters the former was found to be better option both from the point of view of environment and of cost and, therefore, the decision was taken to convert remaining Government vehicles to the CNG mode. However, according to him only 133 kits are presently available. The Government is expecting one consignment by the end of November, 1996 but that would not suffice to provide all the vehicles with CNG mode. He, therefore, prays that time may be further extended up to the end of March, 1997 to enable the Government to convert all the remaining cars to CNG mode. He further states that the criteria for scrapping vehicles has been changed which would enable the Government to scrap a larger number of vehicles and thereby reduce the total number of vehicles to be converted to CNG mode. Taking all these factors into consideration we extend the time up to December, 1996. We would impress upon the Government that it should import a large number of CNG kits to ensure that the entire process *is completed by end of December, 1996.* Mr. Reddy the learned ASG also informs this Court that in counting the total number of vehicles, vehicles belonging to the military as well as certain imported vehicles sparingly used for foreign dignitaries have been excluded. We have taken note thereof.

5. As far as Delhi Administration is concerned, list the matter after Dussehra Holidays.

SCALE (PIL) 1981-97 1224

M.C. MEHTA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, CJI AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. M/s. G & T Resources Worldwide (hereinafter called the 'company') has filed I.A. No. 6/96 and has proposed that they are prepared to experiment at their entire cost the use of propane in two stroke engines. The learned counsel for the Company states that an experiment was carried out in Canada on a two stroke vehicle taken to Canada from India by the use of propane and it was found that after further experimentation it may be possible to effectively use propane on two stroke vehicles without fear of pollution. The Saikia Committee has also recommended the use of propane on two stroke vehicles with a micro-processor unit which would ensure that no pollution is caused by the use of propane. Mr. Dave for the Company states that the use of micro-processor unit would be considered at the second stage if it is found feasible to use propane. The first stage would be to experiment the use of propane on two stroke vehicles by using propane conversion kits. If that experiment succeeds it would be possible to import micro-processor units, if required. He further states that the propane converter units have also to be imported from Canada and the Company already is in the process of importing a few such kits if the necessary permission is granted by the Government of India to experiment the use of propane on two stroke vehicles. Of course, propane would have to be supplied by GAIL to the Company and the Company would make safety arrangements to store propane during the experiment period. The Government of India can also associate in the experiment along with GAIL so that the after effects of the use of propane on two stroke vehicles may be assessed by them also. If this experiment succeeds the Company would be willing to import micro-processor units if they are needed to ensure that no pollution takes place

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Order dated December 9, 1996 in W.P. (C) No. 13029/85 with W.P. (C) No. 9300/82 with Suo Motu Proceedings: In Re: Delhi Transport Deptt. [1997(4) SCALE (SP) 11] by the use of propane so that unburnt propane is not discharged in the atmosphere. Unless an experiment is undertaken as a pilot project it may not be possible to ascertain whether it would be possible to switch over to propane so far as two stroke vehicles are concerned without the fear of causing pollution. There is no doubt that the use of propane is thought of with a view to overcoming the present problem of pollution caused by the use of petrol-cum-oil in two stroke engines. There should not be substitution of pollution by propane in place of pollution caused by petrol-cum-oil used in two stroke engines. But without undertaking an experiment it would not be possible to ascertain if the propane could be an eco-friendly substitute for petrol-cum-oil. We are, therefore, of the view that the Government of India and GAIL should facilitate the company to undertake the experiment which would help in ascertaining whether propane could be a viable alternative to petrol-cum-oil which is causing pollution at present. We, therefore, recommend that the Government of India and GAIL will grant such permissions for import as well as for the use of propane on earmarked two-wheelers and three-wheelers during the experimental period and if the experiment is found to be successful, further attempt for importing the required gadgets in bulk could be undertaken. We were told that the company is even interested in setting up a unit for manufacturing the gadjets in collaboration with a Canadian Company so that their easy supply becomes possible. The Company has already indicated to the Government of India its willingness to carry out the entire experiment at their cost and the area of assistance expected from the Government of India. We would, therefore like the Government of India and all Authorities/ Undertakings of the Government of India to extend assistance to the Company subject to such conditions as to safety requirements as may be necessary to carry out the experiment in India. The State Government (NCT, Delhi) have already shown their willingness to assist in the experiment and have shown willingness to extend such assistance as is required to enable the Company to carry out the experiment. I.A. No. 6/96 will stand adjourned for the present till the report of the experiment is received. We make it clear that the Government of India as well as GAIL will be entitled to appoint an expert so that they may be able to report on the experiment to the Court at a later date and the Company will permit them to monitor the experiment. The Company will experiment the use of propane on 50 three-wheelers and 50 two-wheelers and will report back in about four months. The Saikia Committee would also be kept informed about the developments and they may also participate in the project, if so desired.

2. So far as the Delhi Administration is concerned we enquired of the learned counsel whether or not their vehicles are fitted with catalytic convertors or are run on CNG. The learned counsel states that out of a total of 560 vehicles about 141 are running on catalytic convertors. We would expect the Delhi Administration to convert the rest of the vehicles either by fitting them with catalytic convertors or CNG cylinders within two months from today.

3. We enquired of the learned ASG about the increase in the number of CNG outlets and lead free petrol outlets in Delhi and on Highways. He was able to give some information but we would like that he puts the same on affidavit by tomorrow.

I.A. No. 7/96:

4. Let the Union of India file its response to the I.A. within three weeks.

5. List the matter after Christmas holidays.

SCALE (PIL) 1981-97 1226
M.C. MEHTA *Petitioners*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: SUJATA V. MANOHAR AND M. JAGANNADHA RAO, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Further directions given.

1. Learned counsel for the Delhi Transport Corporation states that they had offered certain alternative sites for installation of the tanks for the project concerning the use of propane for three wheelers and connected facilities. He further states that there should be no difficulty on their part in handing over the alternative sites. In view of this statement, no further directions are necessary at this stage in connection with the sites selected for the purpose.

2. At the request of learned counsel for G.R. Resources, the period for reporting on the experiment relating to the use of propane on 50 three-wheelers under order dated December 9, 1996 is extended for a further period of four months.

3. Adjourned for four weeks since the affidavit on behalf of the Ministry of Environment has been handed over only this morning.

4. I.As 8 and 9 of 1997 be placed on board after four weeks.

Order dated March 21, 1997 in W.P. (C) No. 13029/85 with W.P. (C) No. 9300/82, W.P. (C) No. 939/96 & Suo Motu Proceedings in Re: Delhi Transport Deptt. (with I.A. No. 7). [1997(4) SCALE (SP) 14]

SCALE (PIL) 1981-97 1226
M.C. MEHTA *Petitioners*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: A.M. AHMADI CJI, SUJATA V. MANOHAR AND G.B. PATTANAIK, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — LEAD FREE PETROL — Increase in outlets — Directions given.

1. The Twenty-Fifth Bi-monthly Report is signed by the Chairman and two Members, the third Member and the Convenor Secretary have not signed the Report. We are told that they have signed dissenting note but they are not on the file. Let the dissenting note also be placed on record.

2. The further affidavit filed on behalf of the Government discloses the increase in lead free petrol outlets. The learned ASG states that efforts are on to further increase the outlets particularly in the Delhi and Bombay Sectors. He states that in the Chennai and Calcutta Sectors the demand for lead free petrol is limited and would verify from the registration of new cars if it is on account of people going in for diesel-run cars rather than purchasing petrol - run cars. He may have the matter examined at an early date. So far as the progress report on CNG activities in Delhi is concerned we find that there is a dispensing retail outlet at Bhatia Service Station which could service about 200

Order dated January 24, 1997 in W.P. (C) No. *(sic)* with W.P. (C) No. 9300/82 with Suo Motu Proceedings: In Re: Delhi Transport Deptt. [1997(4) SCALE (SP) 13] cars but the February 1996 Report shows that it has serviced nil. On inquiry, the learned ASG states that that is because outlet has not been functioning for want of permission from NDMC in regard to putting up of shed, etc. The learned counsel for the NDMC is not present and, therefore, it is not possible for us to ascertain why the required permission has not been granted thus far. We would like NDMC to clarify this position by filing an affidavit within the next two weeks. Similar is the position in regard to Gymkhana Service Station. The NDMC should also clarify the position in regard to this Service Station as well.

3. There is also a grievance in regard to on-line Compressor which requires about 32 KW power for running the motor but the supply is actually inadequate and consequently the voltage remains low. Mr. Maheshwari, the learned counsel for DESU, states that he would inquire into the matter and inform the Court of the actual position by the next date of hearing.

4. The MCD will also explain the difficulty pointed out in para 7.2 of the affidavit. Mr. Reddy seeks time to file the affidavit in regard to conversion. He may do so within that time. The MCD may also file the affidavit within two weeks.

5. List the matter thereafter.

SCALE (PIL) 1981-97 1227

DR. GEORGE MATHEW *Petitioner*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI., SUJATA V. MANOHAR AND M. JAGANNADHA RAO, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — GYAN PRAKASH COMMITTEE'S REPORT — Update of order reported in 1996(6) SCALE (SP) 11 — Union of India claims privilege in respect of certain documents the production of which was sought on behalf of the petitioner — Court directs petitioner to file a reply to affidavit claiming privilege.

1. On behalf of the Union of India privilege has been claimed in respect of certain documents the production of which was sought on behalf of the petitioner. Learned counsel for the petitioner submits that there is no application to claim privilege in respect of documents which are referred to in the report of the Gian Prakash Committee and at any rate the nature of those documents was not such as to require maintenance of any confidentiality, assuming the contents thereof are not yet widely known. Learned counsel for the petitioner submits that in view of the claim for privilege it would be appropriate that the petitioner files a reply to the affidavit claiming privilege and that the question be then considered after hearing both sides on the point. We think that this is the appropriate course to adopt.

2. Learned counsel for the petitioner also submits that the learned Attorney General had on 17.2.1997 taken time to seek instructions to inform the Court of the action taken and proposed to be taken by the Government on the Gian Prakash Committee Report but no information to that effect is forthcoming and the additional affidavit on behalf of the Union of India of Sh. Navin Kumar dated 25.4.1997 is quite unsatisfactory. We think that there is justification in the submission. It has been clear throughout that the Union of India was

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Order dated May 2, 1997 in W.P. (C) No. 622/95 [1997(4) SCALE (SP) 15] at no stage restrained from taking action on the Gian Prakash Committee Report notwithstanding the pendency of this matter in the Court and that this matter was required to be entertained as a PIL matter on account of the inaction of the Union of India to take the necessary steps consequent upon the report of the Gian Prakash Committee. In view of this, the learned Solicitor General wants some more time to seek instructions and to apprise the Court of the action taken or proposed to be taken by the Union of India on the Gian Prakash Report.

3. Affidavit on behalf of the petitioner on the question of privilege be filed within four weeks. The matter be listed on 25.7.97.

SCALE (PIL) 1981-97 1228

CENTER OF INDIAN TRADE UNION & ANR. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI., SUJATA V. MANOHAR AND M. JAGANNADHA RAO, JJ.

PUBLIC INTEREST LITIGATION — STATE ACCOUNTABILITY — ENRON POWER PROJECT — Validity of the project and the contract known as Dabhol Power Project — Accountability of the State of Maharashtra on account of the inconsistent stand taken by it from time to time — The Writ Petition that was filed in the High Court was without obtaining leave of the court to bring the same in a representative capacity — Court refused to grant leave to the petitioner with respect to the first question that it is not in public interest to reopen the question which has been considered by the courts on several occasions in earlier PIL matters brought for the purpose — Court grants leave to the petitioner to pursue the matter in a representative capacity on the question relating to the accountability of the State of Maharastra as it is a matter of subsisting public interest inasmuch as the accountability of persons holding any significant public office directly arises for consideration therein on the facts not in controversy because of the prima facie inconsistency appearing from the stand taken by the State Government from time to time.

S.L.P. (C) No. 7734/97

1. Broadly, there are two questions raised in this special leave petition. These are : (1) Validity of the project and the contract known as Dabhol Power Project and (2) the accountability of the State of Maharashtra (respondent No. 2) in this matter, particularly, on account of the inconsistent stand taken by it from time to time. The writ petition which was filed by the petitioner in the High Court was without obtaining leave of the court to bring the same in a representative capacity. For this reason, we required such an application to that effect in this Court for consideration of the question whether the petitioner should be permitted to sue in a representative capacity. We have heard learned counsel for the parties on that question.

2. We are satisfied that the above said first question relating to the validity of the project and the contract does not require a

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Order dated May 2, 1997 in S.L.P. (C) No 7734/97 [1997(4) SCALE (SP) 16] fresh examination at this stage since it is not in public interest now to reopen that question which has been considered by the courts on several occasions in earlier PIL matters brought for the purpose. We are also of the opinion that the stage at which the project now is, it is not in public interest to permit reopening of that matter for re-examination of the validity of the same once again. Leave is, therefore, refused in respect of the above said first question.

3. In our opinion, the second question relating to the accountability of the State of Maharashtra is a matter of subsisting public interest inasmuch as the accountability of persons holding any significant public office directly arises for consideration therein on the facts not in controversy because of the prima facie inconsistency appearing from the stand taken by the State Government from time to time. It is in public interest to consider the same. We are also satisfied that the petitioner No. 1 Center of Indian Trade Unions should be granted leave to pursue this matter in a representative capacity. I.A. No. 2/97 for leave under Order 1 Rule 8, C.P.C. is granted to this limited extent.

4. Issue notice to respondent No. 2 only limited to the above said second question as indicated earlier. The names of the petitioner No. 2 and the remaining respondents be deleted.

5. In view of the nature of proceedings, Shri Shanti Bhushan is requested to appear as amicus curiae in this case. This is to clarify that the petitioner would have no independent or additional right of hearing in the case.

6. List for fixing a date on 14th July, 1997.

S.L.P. (C) No......... (CC 4329/97)

7. In view of the order made by us today in S.L.P. (C) No. 7734/97, it is unnecessary to entertain this special leave petition separately. The same is, therefore, dismissed.

8. Dr. Dhawan who appears for the petitioners in this special leave petition, may assist Shri Shanti Bhushan, learned counsel for the petitioners in S.L.P. (C) No. 7734/97 appointed as amicus curiae.

9. The paperbooks of this special leave petition (CC 4329/97) be made available at the hearing of S.L.P. (C) 7734/97 for reference to any of the documents therein, if necessary.

SCALE (PIL) 1981-97 1229

M/S GATEWAY HOTELS AND GATEWAY RESORTS LTD. *Appellant*

VS

NAGARAHOLE BUDAKATTU HAKKU
STHAPANA SAMITHI AND ORS. *Respondents*

CORAM: J.S. VERMA CJI., B.N. KIRPAL AND S.P. KURDUKAR, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — NATIONAL PARK — Construction of a hotel in the Nagarahole National Park — Disposing the appeal, Court permits the appellant to do water roofing and lay the tiles on the wooden roof of the seven cottages and the roofing of eight other cottages at the appellant's own risk under the supervision of the Chief Wildlife Warden or any person authorised by him in this behalf.

Order dated May 6, 1997 in C.A. No. 3372 of 1997 (Arising out of SLP (C) No. 9341/97) [1997(4) SCALE (SP) 18]

1. Leave granted.

2. Mr. F.S. Nariman, learned senior counsel appearing for the appellant made it very clear that the only grievance of the appellant is confined to the rejection of I.A. No. 2 by the High Court by its order dated 15th April, 1997 and not to any part of the main judgment dated 11th April, 1997. Mr. Nariman submits that the purpose of filing I.A. No. 2/97 was to seek permission for preservation of the existing structure in the manner indicated therein, namely, "by water proofing and laying the tiles on the wooden roof of the seven cottages and roofing of eight cottages at its own risk". The learned counsel further submits that permission be granted to the appellant only to this extent for preservation of the existing structure on such conditions as may be appropriate.

3. Having heard Mr. F.S. Nariman appearing for the appellant and Dr. Rajiv Dhawan, appearing for the respondents, we permit the appellant to do water roofing and laying the tiles on the wooden roof of the seven cottages and roofing of eight other cottages at the appellant's own risk under the supervision of the Chief Wildlife Wardon or any person authorised by him in this behalf.

4. This order is in substitution of the High Court's order dated 15th April, 1997 made in I.A. No. 2/97 as well as the material part to this effect in the main judgment.

5. The appeal is disposed of accordingly. No costs.

SCALE (PIL) 1981-97 1230
UNISON HOTELS LTD. *Petitioner*
VS
D.D.A. & ORS. *Respondent*

CORAM: J.S. VERMA, CJI., B.N. KIRPAL AND S.P. KURDUKAR, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — DELHI AREA — New Hotels allowed to be constructed by D.D.A. in open areas of New Delhi — Environmental impact thereof — Petitioner submits that the writ petition filed by the petitioner in the High Court which has been dismissed by the impugned judgment is based on an independent cause of action unaffected by this Court's earlier judgment — Court issues notice.

1. The submission of learned counsel for the petitioner is that the petitioner does not challenge the correctness or effect of this Court's order dated 13th September, 1996 passed in I.A. No. 18 in W.P. (C) No. 4677/85 (M.C. Mehta vs. Union of India and Ors.), but the application thereof by the Environmental Impact Assessment Authority to the petitioner. The learned counsel submits that the writ petition filed by the petitioner in the High Court which has been dismissed by the impugned judgment is based on an independent cause of action unaffected by this Court's earlier judgment. On this basis, it was contended that the High Court has erroneously assumed that the effect of this Court's earlier judgment is to negative the petitioner's contention. The learned counsel

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Order dated May 6, 1997 in S.L.P. (C) No. 8960/97 [1997(4) SCALE (SP) 19] also made it clear that I.A. No. 48 filed by the petitioner in I.A. No. 18 in W.P. (C) No. 4677/85 was clearly mis-conceived and, therefore, rejection of that I.A. by an order dated 18.2.97 is not challenged in any manner.

2. Issue notice on the special leave petition as well as on the stay application. The matter be listed in a week commencing 14th July, 1997. Dasti service is permitted in addition.

SCALE (PIL) 1981-97 1231
IN THE MATTER OF :-
P.K. SAMANTRAY & OTHERS *Petitioners*
VS
SHRI LALOO PRASAD AND OTHERS *Respondents*
DR. BAPU KALDATE *Applicant/Respondent No.2*
CORAM: S.C. SEN AND S.P. KURDUKAR, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — FODDER SCAM — Holding of Janata Dal Party elections — Court issues final directions.

1. On 27th June, 1997 this case was fixed for hearing when two Minutes were handed over in the Court. It appeared from the Minutes of the first meeting dated the 25th June, 1997 (11.30 a.m.) between Mr. Madhu Dandavate and Mr. Raghuvansh Prasad Singh that Mr. Singh was doing his best to obstruct the holding of the election and indefinitely defer it. He was not willing to carry out the order of the Court although he took it upon himself to do it.

2. However, from the Minutes of the second meeting dated the 26th June, 1997 at 3.00 P.M., an impression was sought to be given by Mr. Singh that he had undergone a change of heart and was willing to go on with the finalisation of the voters list and holding election as directed by the Court on 3rd July, 1997. In that view of the matter we deferred passing of any order on 27th June, 1997.

3. It now appears that the deferment of the decision by this Court has not improved the matter. We are now informed that an attempt was made by Mr. Singh and Mr. Dandavate to sit together and arrive at a final list of voters, that has not been possible.

4. The attitude of Mr. Singh, the second nominee of respondent No.1 appeared to be strange in the first meeting itself when he asked for deferment of the finalisation of the list of voters and holding of the election contrary to the direction of this Court.

5. After hearing the parties and having regard to the facts and circumstances, we are of the view that Mr. Singh is in effect trying to stick to the stand he took in the first meeting by obstructing finalisation of the voters list and compel the Court to defer the election. Under these circumstances, we direct that Mr. Madhu Dandavate alone will finalise the list of voters, fix the venue and hold the election as scheduled after finalising the list of voters immediately. All other directions given previously by this Court will be carried out by Mr. Dandavate. It is only after the elections are held and the results are announced that any aggrieved party will be entitled to challenge the election.

Order dated June 28, 1997 in I.A. No. 2 of 1997 in S.L.P. No. 11482 of 1997. [1997(4) SCALE (SP) 24]

SCALE (PIL) 1981-97 1232
M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: M.K. MUKHERJEE AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — POLLUTION — TAJ AREA — Court earlier had granted permission for holding of Yanni's music concert on certain conditions — Court issues further directions.

I.A. Nos. 40-41/97

1. I.A. Nos. 40-41/97 are rejected.

I.A. No. 28/97

2. I.A. No. 28/97 is rejected.

I.A. No. 38/97

3. When this application is taken up for hearing our attention is drawn to two reports prepared and submitted by NEERI relating to impact of Yanni's music concert on Taj Mahal. The reports indicate that they were prepared in compliance with the order of this Court dated March 18, 1997. Under the said order the Court had constituted a Committee, of which an officer of NEERI was to be a member, to submit a report on the above matter and not NEERI alone. Indeed, the Committee has submitted the report which is on record. The Registry is therefore directed to return the reports submitted by NEERI to Mr. R.C. Dikshit, one of their scientists, who is personally present. As regards the report of the Committee the learned counsel for the parties submit that they have not been supplied with copies thereof and hence they are unable to comment thereupon. Registry is directed to serve copies of the same to the concerned parties and to list this application for hearing on 1-5-1997.

I.A. No. 37/97

4. In view of the averments made in the affidavit filed on behalf of the applicant on April 22, 1997 and the letter dated April 11, 1997 addressed to Agra Founders Association by National Metallurgical Laboratory (NML), Jamshedpur (copy of which is annexed to the affidavit, wherein the latter has indicated the status of the Cokleless Cupola technology available to it, we direct that a notice be issued calling upon NML to appear before this Court on 1.5.1997 and apprise us of the above matter. Dasti permitted.

Order dated April 25, 1997 in W.P. (C) No. 13381/84 [1997(4) SCALE (SP) 19]

SCALE (PIL) 1981-97 1232
S. JAGANNATH *Petitioner*

VS

U.O.I. & ORS. *Respondents*

CORAM: S.C. SEN AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — AQUA FARMS — Court earlier had granted interim stay on closure of all aqua farms — Court extends the order till July 30, 1997.

Order dated April 25, 1997 in R.P. (C) No. 872/97 in W.P. (C) No. 561/94 reg. The Orissa Shrimp Farmers Association. [1997(4) SCALE (SP) 21]

1. Interim order may be finally extended till 30th July, 1997.

2. Counsel may file the contempt application and give the copies to the respondents. The respondents will file the reply thereto by 14th July, 1997. Affidavit in counter may be filed within one week thereafter.

3. List the matters on 25th July, 1997 for final hearing.

SCALE (PIL) 1981-97 1233
VINEET NARAIN AND ORS. *Petitioner*
VS
UNION OF INDIA & ANR. *Respondents*
CORAM: J.S. VERMA, CJI., S.P. BHARUCHA AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — HAWALA CASE — The question pertaining to interference with or shifting of any of the officer in any of the investigative teams of the C.B.I. or any other connected investigative agency such as the Enforcement Directorate in the several matters under investigation by them which are being monitored by this Court and some of the High Courts is under consideration by this Court in this matter which is being heard by a 3-Judge Bench — Court directs that meanwhile no other court including any High Court will entertain or deal with the same in any direct or indirect manner. Such a course is essential in public interest.

1. The question pertaining to interference with or shifting of any of the officer in any of the investigative teams of the C.B.I. or any other connected investigative agency such as the enforcement Directorate in the several matters under investigation by them which are being monitored by this Court and some of the High Courts is under consideration by this Court in this matter which is being heard by a 3-Judge Bench and for this reason the same question even though raised in some other pending matters in this Court is not being considered therein. It is, therefore, inappropriate that the same question or any question connected with it in any manner be entertained or dealt with by any other court including any High Court in any of the matters before it. It has become necessary to say so in view of the fact that we are informed that the same question in different forms is being raised in some other courts including High Courts by different persons. The question being comprehensively dealt with by this 3-Judge Bench in this matter by this Court, we make it clear that no other court including any High Court will entertain or deal with the same in any direct or indirect manner. Such a course is essential in public interest.

2. All the High Courts be given intimation of this order for necessary compliance.

3. List on 14th July, 1997.

Order dated July 9, 1997 in W.P. (Crl.) No. 340-43 of 1993 [1997(5) SCALE 254]

SCALE (PIL) 1981-97 1234

KANHAIYA LAL SETHIA & ANR. *Petitioner*

VS

UNION OF INDIA & ANR. *Respondents*

CORAM: A.S. ANAND AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 32 — Petition praying that Union of India be directed to introduce a Bill to include Rajasthani in the VIIIth Schedule — Whether the petitioner is vested with any fundamental right to compel the Union of India to bring forth a particular legislation or to exercise its discretion in the Parliament in a particular manner — Dismissing the appeal, Held,

A. To include or not to include a particular language in the VIIIth Schedule is a policy matter of the Union. Generally speaking, the Courts do not, in exercise of their power of judicial review, interfere in policy matters of the State, unless the policy so formulated either violates the mandate of the Constitution or any statutory provision or is otherwise actuated by mala fides. No such infirmity is present in the instant case. (Para 2).

1. In this Writ Petition, filed by way of 'Public Interest Litigation', the petitioners have prayed as follows:-

> (a) direct respondent No.1 (Union of India) to introduce an Official Bill in the Parliament to include Rajasthani language in the VIIIth Schedule to the Constitution; or to sponsor a Private Member's Bill to be introduced on this subject;
>
> Or, in the alternative:
>
> strike down the Constitutional (71st Amendment) Act of 1992 by which Manipuri, Konkani and Nepali found their places in the VIIIth Schedule, to the constitution being violative of one of the basic structures of the Constitution, viz. equality'
>
> AND
>
> (b) pass such order/orders or give such direction/directions as your Lordships may deem fit and proper.

2. To include or not to include a particular language in the VIIIth Schedule is a policy matter of the Union. Generally speaking, the Courts do not, in exercise of their power of judicial review, interfere in policy matters of the State, unless the policy so formulated either violates the mandate of the Constitution or any statutory provision or is otherwise actuated by mala fides. No such infirmity is present in the instant case.

3. The petitioner is not vested with any fundamental right to compel the Union of India to bring forth a particular legislation or to exercise its discretion in the Parliament in a particular manner. It is, thus, not open to the petitioner to seek a direction to the Union of India "to sponsor a Private Member's Bill to be introduced on this subject".

4. Insofar as the challenge to the constitutional validity of the 71st Amendment Act of 1992 by which Manipuri, Konkani and Nepali were included in the VIIIth Schedule is concerned, we fail to see how the inclusion of those languages violates any "basic structure of the Constitution" as alleged by the petitioners. The challenge, "in the alternative", is without any merits.

5. This writ petition under Article 32 is misconceived and it is, accordingly, dismissed.

Order dated August 4, 1997 in W.P. (C) No. 356 of 1997 [1997(5) SCALE 341]

SCALE (PIL) 1981-97 1235

INDIAN COUNCIL FOR ENVIROLEGAL ACTION & ORS. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: SUJATA V. MANOHAR AND G.B. PATTANAIK, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — Update of order reported in 1997(1) SCALE SP-21

T.P. (C) No. 172/96 to come up along with W.P. (C) No. 1056/90.

1. The District Judge by his letter dated 13th of March, 1997, addressed to the Assistant Registrar of this Court, requested that in order to disburse the remaining amount of Rs. 63,65,222/- which is lying with him, it is necessary for him to have a copy of Annexure 'D' to the affidavit of the Joint Secretary, Government of Andhra Pradesh dated 11.7.96 which gives particulars of the areas affected. The Office is directed to send to the District Judge at Medak an authenticated copy of Annexure 'D' to the said affidavit to enable him to disburse the amount lying with him. The District Judge is also directed to submit in consultation with the Revenue Authority, if required, a further Report assessing further damages, if any, after the last assessment and the quantum of such damages/compensation. This may be done within three months.

2. Despite the directions which have already been given, there is no satisfactory progress in the matter. Learned advocate who appears for PETL, pursuant to a notice given to him, states that PETL which is a Limited Company, constituted by the Industries which are using the said treatment plant has taken ver the said plant from the State Government Undertaking only in December, 1996. He also states that they are taking active steps to expand and rejuvenate the common effluent treatment plant of PETL. In respect of Industries in Bholaram Industrial Area there is a common effluent treatment plant which, according to the petitioner, is under the control and management of M/s Progress Effluent Treatment Limited. Notice to issue to CETL and M/s. Progress Effluent Treatment Limited and CETL through Andhra Pradesh Pollution Control Board stating that a status report should be submitted relating to the functioning of the Common Effluent Treatment Plant (CETL) and the steps, if any, being taken for proper treatment of effluents.

3. Since the A.P. Pollution Control Board was earlier connected with the functioning of the PETL it is desirable that we have an independent report from the Central Pollution Control Board in connection with the status of PETL as well as CETL. The Report shall set out inter alia the capacity of these plants, their functioning and the extent of treatment which the effluent receives in these plants, as also whether the discharge from these plants meets the pollution control standard of the CPCB. The report shall also set out the extent of the areas around the industries which are damaged as a result of the discharge of effluents and the extent of such damages, as also the steps which should be taken to restore the affected areas to their non-polluted condition. The report shall also state the steps which are required to be taken for proper functioning of PETL and CETL and the time-frame within which this can be done. These are only some of the factors which we have indicated. The Central Pollution Control Board should deal comprehensively with the entire problem and suggest such measures as they think appropriate for

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Order dated July 29, 1997 in I.A. Nos. 2 & 9-11 in W.P. (C) No. 1056/90 [1997(5) SCALE 405] rectifying the situation.

4. In our order of 27th January, 1997, we had permitted the industries which are named in that order to have their effluents treated in their own effluent treatment plants since the common effluent treatment plant did not have enough capacity to treat all effluents brought to the common effluent treatment plant. It is now contended before us by PETL that some of these industries have only a primary treatment plant and not a full treatment plant for the treatment of effluents. The Central Pollution Control Board should also, in their report, set out the industries which have their own effluent treatment plant, indicating whether it is a complete plant or whether it is only for primary treatment of effluents. It should also inspect and report on the quality of the effluents discharged from these private effluent treatment plants belonging to each of these industries, and whether they meet the prescribed standards.

5. Any other industry in that area which also has its own effluent treatment plant apart from the industries which are mentioned in our order of January, 1997, shall also be similarly inspected by the CPCB and a similar report in connection with such industries shall also be furnished. The report shall also list the names of all polluting industries in this area and the extent of pollution generated by those industries. The report shall be submitte within a period of three months. A notice shal also go to the CPCB to remain present on th next occasion.

6. No directions on I.A. No. 10, filed b Meeta Industries, since according to us thi appropriate authority for giving suc directions would be the District Court, if considers it appropriate to do so.

SCALE (PIL) 1981-97 1236

S. JAGANNATH Petition

VS

UNION OF INDIA AND OTHERS Responder

CORAM: S.C. SEN AND S. SAGHIR AHMED, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — AQUA FARMS — Court direc that this matter should be heard by a larger bench of this Court — Having rega to the facts and circumstances and also the prayer in it, the matter should be hea with utmost expedition. Court further directed the matter to be placed before t Hon'ble Chief Justice of India for necessary orders — Court also directed that t demolition of the aqua farms will not take place till August 20, 1997.

1. After hearing the parties and considering the matter, we are of the view that this matter should be heard by a larger bench of this Court. Having regard to the facts and circumstances and also the prayer in it, the matter should be heard with utmost expedition. We direct the matter to be placed before the Hon'ble Chief Justice of India necessary orders.

2. The demolition of the aqua farms not take place till August 20, 1997. This or is passed without prejudice to the conten made by the counsel appearing on behal the respondents that these Review Petiti

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July 30, 1997 in R.P. No. 872 of 1997 in W.P. No. 561 of 1994. with R.P. Nos. 542, 945, 893, 636, 846, 673, 1000, 1013, 727, 1066 of 1997 with C.P. No. 253 of 1997 in W.P. (C) No. 561/1994. [19 SCALE 406] are not maintainable at all.

3. It was further contended by Ms. Indira Jaisingh, that the question now raised by the Solicitor General that the acqua farms are not industries was never raised at hearing when the matter was heard originally.

4. It is clarified that the stay is only against the demolition.

Contempt Petition No. 253/97 in W.P. (C) No. 561/1994.

5. So far as the State of Tamil Nadu, Andhra Pradesh and Kerala are concerned, copy of the petition or any further affidavit may be given to the lawyers appearing - Reply to be filed within two weeks in all the cases. Adjourned for three weeks.

SCALE (PIL) 1981-97 1237

WASIM AHMED SAEED *Petitioner*

VS

UNION OF INDIA & ORS. *Respondent*

CORAM: A.S. ANAND AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ANCIENT MONUMENTS — Shooting of a film inside and around the Dargah — Court directs no such activity, which is not connected with the affairs of the Jama Masjid or the Dargah, should be permitted by the Archaeological Survey of India inside the Mosque or the Dargah, till further orders.

1. An affidavit has been filed on behalf of the Govt. of U.P. by the Additional District Magistrate (Executive), Distt. Agra, in which inter-alia, it is stated that the State is willing to provide a site near the present bus stand, located in Mauza Araji Imlak in survey plot No. 127, which site is presently lying unoccupied to the shopkeepers for setting up their Dhoopbatti and and Chadar shops, on licence basis. It is stated that the shopkeepers have submitted their willingness to shift their Dhoopbatti and Chadar shops at the proposed site. In the reply affidavit filed by Mohd. Yaseen, a nominee of the Administrator of the Dargah Wakf, it is stated that the site which has been offered by the State of U.P. is wakf property. Learned counsel for the State of U.P. states that the State has already addressed a communication to the wakf Board seeking its consent to allotment of the site, in question, to the shopkeepers for setting up Dhoopbatti and Chadar Shops and that the reply from the wakf Board is awaited. Learned counsel prays for four weeks adjournment to report further action. Adjournment is granted.

2. It has been brought to our notice that shooting of some film has been permitted, inside the Mosque and around the Dargah, by the Archaeological Survey of India. Learned counsel for the petitioner in Writ Petition No. 455/98 submits that such activities should not be permitted. Learned counsel for the Archaeological Survey of India is directed to state on affidavit his response to the above allegation in four weeks. It is, however, directed that no such activity, which is not connected with the affairs of the Jama Masjid or the Dargah, should be permitted by the Archaeological Survey of India inside the Mosque or the Dargah, till further orders.

3. List the matter after four weeks.

Order dated March 31, 1997 in W.P. (C) No. 653/94 with W.P. (C) No. 455/96 [1997(5) SCALE 451]

SCALE (PIL) 1981-97 1238

RESEARCH FOUNDN. FOR SCIENCE *Petitioners*

VS

U.O.I. & ANR. *Respondents*

CORAM: J.S. VERMA, CJI AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — HAZARDOUS WASTES — Court was left with the impression that even now all the authorities do not appear to appreciate the gravity of the situation and the need for prompt measures being taken to prevent serious adverse consequences if the problem is not tackled immediately — Court was left with no option except to constitute an appropriate Committee to ensure that the needful is done to arrest further growth of this problem — Court further requested learned counsel for the petitioner and the learned Additional Solicitor General to furnish the names of some suitable persons including experts who could be appointed to such a Committee.

1. It does appear to us that all the State Governments have not taken the steps required of them under the applicable laws as well as our earlier directions. We find that in spite of considerable time having been given, all the material facts also have not been placed before us on affidavit by the concerned authorities. We are left with the impression that even now all the authorities do not appear to appreciate the gravity of the situation and the need for prompt measures being taken to prevent serious adverse consequences if the problem is not tackled immediately. In such a situation when the learned Additional Solicitor General also says that the Central Government has not been given full information by all the State Governments about the compliance by them of the directions of this Court, we are left with no option except to constitute an appropriate Committee to ensure that the needful is done to arrest further growth of this problem. Learned counsel for the petitioner and the learned Additional Solicitor General are requested to furnish the names of some suitable persons including experts who could be appointed to such a Committee. They may do so within a week.

2. List on 19th August, 1997.

Order dated August 4, 1997 in W.P. (C) No. 657/95. [1997(5) SCALE 495]

SCALE (PIL) 1981-97 1238

C. VENKATACHALAM *Petitioners*

VS

RABRI DEVI & ORS. *Respondents*

CORAM: S.P. BHARUCHA AND V.N. KHARE, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 32 — Appointment of Rabri Devi as Chief Minister of State of Bihar — Court dismissed the same on the ground that it raises political questions that must be politically resolved.

Order dated August 22, 1997 in W.P. (C) No. D12822/97. [1997(5) SCALE 632]

1. We have pointed out to learned counsel for the petitioner that this public interest litigation raises political questions that must be politically resolved. Counsel proposes to cite authorities of Constitution Benches of this Court to satisfy us that this Court has entertained political questions. We have declined, considering what is before us in this petition, to permit counsel to launch into a citation of decisions. The writ petition is dismissed.

SCALE (PIL) 1981-97 1239

M.C. MEHTA *Petitioner*

VS

ARCHEOLOGICAL SURVEY OF INDIA & ORS. *Respondents*

CORAM: M.K. MUKHERJEE AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ANCIENT MONUMENTS — TOMBS OF ZAUQ AND GHALIB — PRESERVATION OF MONUMENTS — Follow up of order reported in 1997(2) SCALE (SP) 25 — Court directs further report of compliance.

1. I.A. No. 20/97 is rejected.

2. Now that new block of lavatories have been constructed. The respondents are directed to demolish the old lavatories and submit the report of compliance to this Court on or before 8-5-97 on which date this matter will come up for hearing.

Order dated April 25, 1997 in W.P. (C) No. 476/96 [1997(5) SCALE (SP) 1]

SCALE (PIL) 1981-97 1239

B.L. WADEHRA *Petitioners*

VS

UNION OF INDIA *Respondents*

CORAM: M.K. MUKHERJEE AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — DELHI — Cleanliness in the city — Court directs M.C.D., N.D.M.C. and D.D.A. to respond to the 8th Inspection Report submitted by the Central Pollution Control Board and the recommendations made by the three learned lawyers of this Court who constituted a committee to ascertain the cleanliness efforts being made by the above authorities — The responses to be filed within four weeks.

1. M.C.D., N.D.M.C. and D.D.A. are directed to respond to the 8th Inspection Report submitted by the Central Pollution Control Board and the recommendations made by the three learned lawyers of this Court who were constituted a committee to ascertain the cleanliness efforts being made by the above authorities. The responses to be

Order dated July 14, 1997 in W.P. (C) No. 286/94. with W.P. (C) 397/92 [1997(5) SCALE (SP) 2] filed within four weeks.

2. The Central Pollution Control Board will also submit a report by that date regarding installation and functioning of pollution control devices in the different hospitals in Delhi as ordered by this Court on December 4, 1996. The D.D.A. will also submit a report by then regarding the cleaning of the roads and the taking over the colonies in terms of the order of this Court dated December 2, 1996.

3. The learned counsel for the Union of India prays for and is granted six weeks' further time to file a comprehensive plan in compliance with the order of this Court dated December 9, 1996.

SCALE (PIL) 1981-97 1240
LAXMI KANT PANDEY *Petitioner*
VS
UNION OF INDIA & ANR. *Respondents*

CORAM: P.N. BHAGWATI, CJ., R.S. PATHAK AND AMARENDRA NATH SEN, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — Procedure to be adopted in the work of offering Indian Children to foreign parents — Clarifications given.

Bhagwati, CJ.— This writ petition was initiated on the basis of a letter addressed by the petitioner complaining of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. Since we found that there was no legislation enacted by Parliament laying down the principles and norms which must be observed and the procedure which must be followed in giving an Indian child in adoption to foreign parents, we entertained the writ petition and after hearing large number of social organisations and voluntary agencies engaged in placement of child in adoption, delivered an exhaustive judgment on 6th February, 1984 discussing various aspects of the problems relating to inter-country adoption and formulating the normative and procedural safeguards to be followed in giving an Indian child in adoption to foreign parents.

2. Pursuant to the directions given by us in our Judgment in this writ petition, the Government of India proceeded to recognise various social or child welfare agencies in India for the purpose of inter-country adoption. The Government of India also, through its diplomatic missions abroad, collected names of the social or child welfare agencies in foreign countries recognised by their respective Governments for sponsoring applications of foreigners for taking a child in adoption and prepared a list of such social and welfare agencies. The Government of India also, in obedience to the directions given by us, circulated copies of the list of foreign social or child welfare agencies recognised by their respective Governments as also of the list of social or child welfare agencies recognised by the Government of India for placement of children in inter-country adoption, to all the High Courts in the country with a request to the High Courts to send copies of the two lists to the district courts within their respective jurisdiction. But it seems that some of the social or child welfare agencies engaged in placement of children in

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Judgment dated September 27, 1985 in CMP Nos. 60726, 60740, 70040, 70422-23, 70870-70592, 70826, & 8137-38/84 in W.P. (Crl.) No. 1171 of 1982. [1985(2) SCALE 849] inter-country adoption felt that there were certain difficulties in implementing the principles and norms laid down by us in our judgment and various applications were therefore made by them asking for clarification and alteration in the principles and norms adopted and the procedure laid down by us. These applications are being disposed of by us by this common judgment.

3. The first point raised in these applications relates to the question whether a scrutinizing agency must be distinct from a placement agency. We entirely agree with the submission made by some social and child welfare agencies that the scrutinizing agency appointed by the Court for the purpose of assisting it in reaching the conclusion whether it would be in the interest of the child to be given in adoption to the foreign parents must not in any manner be involved in placement of children in adoption. The scrutinizing agency must be an expert body having experience in the area of child welfare and it should have nothing to do with placement of children in adoption for otherwise objective and impartial evaluation may not be possible. Where therefore there an institution or agency which is engaged in the placement of children in adoption, it should not be appointed as scrutinizing agency by the court. The two scrutinizing agencies usually commissioned by the courts are the Indian Council of Social Welfare and the Indian Council of Child Welfare. These two institutions or agencies have acquainted themselves very creditably so far and the courts may therefore continue to entrust scrutinizing work to them, but there may also be other scrutinizing agencies which can be employed for this purpose. They must however be basically child welfare agencies and must not be engaged in placing children in adoption.

4. The next point regarding what steps must be taken where there is disruption in the family of the petitioner need not detain us. We have already directed in our Judgment that the social or child welfare agency sponsoring the application must undertake that in case of disruption of the family of the foreigner before adoption can be effected, it will take care of the child and find a suitable alternative placement for it with the approval of the concerned social or child welfare agency in India and report such alternative placement to the court handling the guardianship proceedings and such information shall be passed on both by the court as also by the concerned social or child welfare agency in India to the Secretary, Ministry of Social Welfare, Government of India. We would suggest that additionally the social or child welfare agency sponsoring the application should also, in the event of disruption of the family of the foreigner before adoption can be effected, give intimation of this fact to the Indian Embassy or High Commission, as the case may be, and the Indian Embassy or High Commission shall also be kept informed about the whereabouts of the child so that they can take the necessary steps for ensuring that the child is properly taken care of and a suitable alternative placement for it is found. If a disruption in the family of the foreigner takes place after the child is adopted, we do not think that anything can be done by the social or child welfare agency sponsoring the application, because, on adoption, the child would acquire the nationality of its adoptive parents and would then be entitled to all the rights of a national in that country.

5. The third point raised in these applications relates to the role which a scrutinising agency is expected to play in the procedure relating to inter-country adoptions. There was considerable debate before us on this point and after carefully considering the various arguments, we are of the view that the scrutinising agency should not be asked to make any inquiries before a child is offered in adoption to a foreigner or a petition for appointment of a foreigner as guardian is filed in court. The primary responsibility for ensuring that the child is legally free for adoption must be that of the social or child welfare agency processing the application of the foreigner for guardianship of the child. Whatever inquiries are necessary for the purpose of satisfying itself that the child has been voluntarily relinquished by its biological parents after understanding all the implications of adoption as envisaged in paragraph 14 of our Judgment must be the responsibility of the social or child welfare agency processing the application for guardianship. We have already laid down sufficient safeguards in this connection in paragraph 18 of our Judgment and it is not necessary to say anything more about it. But so far as the scrutinising agency is concerned, it should not come into the picture at this stage. It has a vital role to play after a foreigner has approved of the child to be taken in adoption and a petition is filed in court for appointment of the foreigner as guardian of the child and it is at that stage that the scrutinising agency is expected to assist the court in coming to the conclusion whether it would be in the interest of the child to be given in adoption to the foreigner. The scrutinising agency should not at that stage try to ascertain who are the biological parents of the child and whether they are willing to take back the child. That is primarily the responsibility of the social or child welfare agency processing the application and that is why we have insisted in our Judgment it is only a social or child welfare agency recognised by the Government which should be entitled to process the application for guardianship and recognition must be given by the Government only after considering whether such social or child welfare agency enjoys good reputation and is known for its work in the field of child care and welfare and whether it has proper staff with professional social work experience. The court should, in order to make sure that the child is legally free for adoption, require the social or child welfare agency processing the application to place material before the court stating what efforts have been made to trace the biological parents and what are the circumstances in which the child came into the possession of such social or child welfare agency. Where the court feels some doubt as to how the child has been obtained and in what manner, the court may ask the scrutinising agency to make inquiries with a view to finding out how the social or child welfare agency processing the application has got the child and if the child has been obtained by such social or child welfare agency from another institution or agency, how that institution or agency got the child and from what source and in what manner and the scrutinising agency may then make discreet inquiries for this purpose without disclosing to any one that the child is sought to be given in adoption. The court may also in an appropriate case where it has some doubt ask the scrutinising agency to inquire whether the child has been voluntarily surrendered by the biological parents or whether such relinquishment has been obtained by fradulent means. But unless the court so directs, the scrutinising agency should not make any attempt to trace the biological parents of the child or to inquire whether they are willing to take back the child. We may also point out that the scrutinising agency should, while scrutinising the application, adopt a sympathetic and sensitive approach with in-depth understanding of the dynamics of human behaviour.

6. We agree with the point made in some of these applications that the social or child welfare agency engaged in the work of placing children in adoption should not readily assume that children including cradal babies who are found abandoned are legally free for adoption. Such children must be produced before the Juvenile Court so that further inquires can be made and their parents or guardians can be traced. In States where there is no Children Act in force, such children should be referred to the Social Welfare Department for making further inquiries and tracing their parents or guardians. This procedure should be completed at the latest within three months and no children who are found abandoned should be deemed to be legally free for adoption until the Juvenile Court or the Social Welfare Department declares them as destitutes or abandoned. It should also be impressed upon the Juvenile Courts that when children are selected for adoption, release orders should be passed by them expeditiously and without delay and proper vigilance in this behalf must be exercised by the High Courts.

7. That takes us to the next point raised in these applications which relates to transfer of children from one State to another for the purpose of being given in adoption. We took the view in our Judgment that there should not be any objection in a child under the care of a social or child welfare agency or hospital or orphanage in one State being taken to another State by a social or child welfare agency for the purpose of being given in adoption because we felt that the procedural safeguards laid down by us would be sufficient to eliminate the possibility of trafficking in children through inter-State transfer of children. We pointed out that since we are directing that every application of a foreigner for taking a child in adoption shall be routed only through a recognised social or child welfare agency and an application for appointment of the foreigner as guardian of the child shall be made to the court only through such recognised social or child welfare agency, there would hardly be any scope for a social or child welfare agency or individual, who brings the child from another State for the purpose of being given in adoption, to indulge in trafficking and such a possibility would be reduced to almost nil. But it has been urged upon us by various social and child welfare agencies that it may not be desirable to permit a child to be taken from one State to another for the purpose of being given in adoption, because that would encourage representatives of foreign agencies as also unscrupulous persons to go scouting for children to different States and taking advantage of the poverty of the large masses of people, persuade indingent parents, by offering monetary inducement, to part with their children and then arrange to give such children in inter-country adoption through the instrumentality of a recognised social or child welfare agency getting in the process a sizable profit for themselves. This apprehension voiced on behalf of the social or child welfare agencies is not altogether unjustified. But on that account alone it would not be right to prevent a child from being taken from one State to another by a social or child welfare agency for the purpose of being given in adoption, because at the place where a child is found destitute or abandoned or where the biological parents, who not being in a position to support the child are prepared relinquish it for the purpose of its being given in adoption to a person who can taken proper care of it, are living, there may be no social or child welfare agency which can take the child for being placed in adoption. There may be a social or child welfare agency in another State which is in a position to take care of such child and find suitable parents for giving it in adoption and if that be so, we do not see why such social or child welfare agencies should not be permitted to take the child from one State to another for the purpose of being given in adoption rather than leave it to grow up uncared for in want and destitution. We have laid down considerable safeguards in paragraph 19 of our Judgment in order to prevent any abuse of this practice and we are not inclined to interdict it altogether. But we would direct by way of additional safeguard that no court in a State will entertain an application for appointment of a foreigner as guardian of a child which has been brought from another State, if there is a social or child welfare agency in that other State which has been recognised by the Government of India for inter-country adoption. The social or child welfare agency processing the application for guardianship should then be directed to send the child to the recognised social or child welfare agency in the other State, so that whatever proceedings are necessary for giving the child in adoption may be instituted by that social or child welfare agency and in such an event, the complete details of the case history and background including the home study report, the child study report, if any, and all other information relating to the child should be made available to the latter social or child welfare agency. If there is no recognised social or child welfare agency in the State where the child is found or obtained, the child shall be transferred to a recognised social or child welfare agency at the nearest place in the immediate neighbouring State.

8. There was also one other point raised by some of the social or child welfare agencies and that was in regard to the reports to be made by the social or child welfare agency sponsoring the application, after the foreigner is appointed guardian of the child and he takes the child to his own country. We directed in our Judgment that the order to be made by the court shall include a condition that the foreigner who is appointed guardian shall submit to the court as also to the social or child welfare agency processing the application for guardianship, progress reports of the child quarterly during the first two years and half yearly for the next three years. But it was suggested by some social or child welfare agencies that this direction should be limited only in case of adoption of handicapped children but so far as normal children were concerned, it would be enough if the progress reports were submitted for a period of two years or until adoption which ever event happens later. We do not think we can accept this suggestion wholly. It is necessary that progress reports must be submitted to the court and to the social or child welfare agency in India quarterly during the first two years and half yearly for the next three years but after adoption had taken place the courts may not insist on strict observance of this requirement. We are of the view that the order to be made by the court should also provide that progress reports shall be submitted by the social or child welfare agency sponsoring the application of the foreigner until adoption is effected. That would provide greater assurance because it may not be possible to take any action if the foreigner fails to provide progress reports, but if the social or child welfare agency sponsoring the application for guardianship fails to submit progress reports, the court can in future decline to entertain any application for guardianship where the foreigner seeking appointment as guardian is sponsored by such social or child welfare agency.

9. The next point raised on behalf of some of the social and child welfare agencies was in regard to the role which the representatives of foreign agencies should be allowed to play in inter-country adoption. Now there can be no objection to a foreign child or social welfare agency having its representative in India. It would undoubtedly help to ensure proper and timely medical care for the child selected for adoption as also smooth carrying out of legal formalities in connection with guardianship proceedings and travel arrangements for the child to go to the country of its prospective foreign parents and also facilitate communication between the foreign parents and the sponsoring social or child welfare agency on the one hand and the social or child welfare agency processing the application for guardianship on the other. We do not, therefore, see any objection to a foreign social or child welfare agency having a representative in India, but it is necessary to lay down certain parameters within which such representative can be allowed to operate. In the first place, the representative should be an Indian citizen with a degree or diploma in social work coupled with experience in child welfare. Secondly, the representative should be acting only for one foreign social or child welfare agency and not more not should he be working on a free lance basis. It would also be desirable to limit the sphere of operation of the representative to a particular geographical area so that he is able to attend to his functions and duties properly and diligently. The representative should have a general power of attorney to act in India on behalf of the foreign social or child welfare agency and he should also have the authority to operate banking accounts in the name of the foreign social or child welfare agency with the permission of the Reserve Bank of India. We would insist that, in order to prevent taking of children from needy parents by offering them monetary inducement and to eliminate trafficking in children, the representative of the foreign social or child welfare agency should not be permitted to go scouting for children or to receive children directly from parents. He should be allowed to act as representative only if he is recognised as such by the Central Government and such recognition may be given by the Central Government subject to the condition that the various requirements set out by us above are complied with by such representative.

10. We may also point out that if there is a social or child welfare agency owned or operated by the Government in a foreign country, it would not be necessary for a foreigner to route his application through a recognised social or child welfare agency within his country and he can approach a recognised social or child welfare agency in India through such Government agency. It seems that in Sweden the Swedish local authority is the social or child welfare agency through which applications for taking children in adoption are routed and obviously, therefore, the application of a foreigner who is a national of Sweden can be entertained by a recognised social or child welfare agency in India, if it is sponsored by the Swedish local authority, we would also like to make it clear that where there is a Government agency in a foreign country through which applications for taking children in adoption are routed, as in Sweden, it may not be possible to insist that the progress reports in regard to the child should be submitted by the Government agency and in such a case it may be enough to provide in the order to be made by the court that the progress reports shall be submitted by the foreign parents through the Government agency.

11. Then another point was raised on behalf some of the social and child welfare agencies and that related to the direction given by us in our Judgment that the certificates, declarations and documents required to be submitted along with the application of the foreigner for taking a child in adoption should be duly notarised by a Notary Public and the signature of the Notary Public should be duly attested either by an officer of the Ministry of External Affairs or Justice or Social Welfare of the country of the foreigner or by an officer of the Indian Embassy or High Commission or Consulate in that country. It was suggested on behalf of some social and child welfare agencies that the requirement that the signature of the Notary Public should be attested by one of these officials should be dispensed with, since it was likely to cause considerable impediment in the way of the sponsoring social or child welfare agency on account of the difficulty in obtaining the attestation of the signature of the Notary Public by one of these officials. Some social or child welfare agencies however opposed this suggestion and submitted that this requirement should be insisted, because in practice it did not create any difficulty at all. It was said that this requirement is a healthy safeguard to ensure that the certificates, declarations and documents submitted along with the application of the foreigner are genuine. We agree that there is no need to dispense with this requirement. So far, there has been no difficulty in obtaining the attestation of one of these officials and there is no reason why this requirement should not be insisted upon. It is undoubtedly true that some delay might occur in complying with this requirement but such delay need not worry us, because it will not be long and moreover the procedure involved in this requirement would have to be followed at a stage before the child is selected for adoption by the foreigner.

12. It was also submitted by some of the social or child welfare agencies that Court, while making an order for appointment of a foreigner as guardian, should not insist on deposit being made by way of security for enabling the child to be repatriated to India, should it become necessary for any reason and instead a bond to be executed by the foreigner should be sufficient. Not it is true that if security by way of deposit is insisted upon the court, it may cause a certain amount of hardship to the foreigner because his monies would remain locked up in court and though after the adoption is effected by him, he would be entitled to return of the amount deposited, it would be difficult for him to get that amount repatriated to him in the foreign country. But even so we do not think that we should issue any direction that deposit should not be insisted upon in any case. It should be a matter to be decided by the court in the exercise of its judicial discretion. Of course, he may not ordinarily insist on making of the deposit by the foreigner but in an appropriate case, if he so thinks fit, he may pass such an order. The execution of a bond would ordinarily be sufficient. The bond should be by way of security for repatriation of the child to India in case it becomes necessary to do so as also for ensuring adoption of the child within the period of two years. But a question was raised as to who should be required to execute the bond. The bond may be executed by the foreigner who is appointed guardian of the child, but there may be difficulty in enforcing such bond, unless the bond is executed in favour of the Indian Diplomatic Mission in the country of the foreigner. It might therefore be safer to take the bond from the representative of the foreign child or social welfare agency in India so that if the condition of the bond is violated, the court can proceed to enforce the bond against such representative who would be an Indian national. There is also another alternative which may be adopted by the court. The court may take the bond from the social or child welfare agency which has processed the application and such social or child welfare agency may in its turn take a corresponding bond from the sponsoring social or child welfare agency in the foreign country. Ordinarily the sponsoring social or child welfare agency would honour the bond in case the condition of the bond is broken, because if it fails to do so, no recognised social or child welfare agency in India would in future deal with it. But, though this alternative may in a given case, be adopted by the court, where the recognised social or child welfare agency processing the application is ready to give the bond, the court should not insist upon execution of the bond by such social or child welfare agency. It would be sufficient to take the bond from the representative of the foreign social or child welfare agency in India or to insist on the bond being executed by the foreigner in favour of the Indian Diplomatic Mission abroad.

13. Some difficulty was pointed out to us that though ordinarily it should be possible to go through the procedure for adoption within two years, there may be instances where the procedure may take longer and in that event, unless there is a relaxing power, the failure or inability of the foreigner to complete the adoption process within two years would result in breach of the condition of the bond and the bond would be liable to be forefeited. We appreciate that this difficulty may arise in some exceptional cases and we must therefore provide for such a situation. We would direct that where it is not possible for the foreigner to complete the adoption process within two years, an application should be made to the court for extension of time for making the adoption and the court may grant appropriate extension of time.

14. We may again emphasise, even at the cost of repetition, that notice of the application for guardianship of a child should in no case be published in the newspapers, because otherwise the biological parents would come to know who is the person taking the child in adoption and they might, with this knowledge at any time be able to trace the whereabouts of the child and they may try to contact the child resulting in emotional and psychological disturbance for the child and the possibility cannot be ruled out that they may also attempt to extort money from the adoptive parents. No notice of the application should for the same reasons be issued to the biological parents and this is particularly important in case of an unwed mother who has relinquished the child, for to disclose her name to the court or to give her notice would be highly embarrassing.

15. Then a question was raised by some of the social and child welfare agencies that the sum of Rs. 60/- per day fixed by us as the maximum for reimbursement of maintenance expenses which may be incurred by a social or child welfare agency on the child was too high and that it should be reduced to Rs. 500/- per month. The argument in favour of reduction of the maintenance expenses from Rs. 60/- per day to Rs. 500/- per month was that if such a high amount was permissible to be charged by way of maintenance expenses many social and child welfare agencies engaged in placing children in adoption would prefer to give the children to foreigners in inter-country adoption rather than to Indian parents, because the Indian parents would not be in a position to reimburse maintenance expenses at such a high rate. There is some force in this contention, but we should like to make it clear that the sum of Rs. 60/- per day, which we have provided, represents the outside limit of the maintenance expenses which may be recovered from the prospective adoptive parents and it does not represent the rate at which maintenance expenses should be recoverable in every case. We have no doubt that the recognised social or child welfare agency through whom the application for guardianship is processed would take care to see that no exhorbitant amount is sought to be charged by the social or child welfare agency looking after the child, by way of maintenance expenses. But we would by way of greater safeguard direct that when the court makes an order appointing a foreigner as guardian, the court should look into this question and sanction the amount to be paid by the foreigner to the social or child welfare agency by way of reimbursement of maintenance expenses and that only such amount as may be sanctioned by the court shall be recoverable by the social or child welfare agency by way of maintenance expenses from the foreigner who is appointed guardian of the child. So for as surgical or medical expenses incurred on the child are concerned, they should also be recoverable by the social or child welfare agency against production of bills and vouchers. This requirement would provide an adequate safeguard against trafficking in children for money or benefits in kind. The court would of course, while granting sanction, take a practical view in this matter, bearing in mind that many of the social or child welfare, agencies running homes for children have meagre financial resources of their own and have to depend largely on voluntary donations and unless reasonable maintenance expenses and actual surgical and medical expenses are allowed to be recovered by them from the foreigner taking the child in adoption, it might become difficult from them to survive and to carry on their philanthropic work. The recognised social or child welfare agency processing the application must also be entitled to recover from the foreigner who is sought to be appointed guardian of the child, cost incurred in preparing and filing the application and prosecuting it in court. Such expenses may include legal expenses, administrative expenses, preparation of child study report, preparation of medical and I.Q. reports, passport and visa expenses and conveyance expenses and they may be fixed by the court at such figure not exceeding Rs. 4,000/- as may be thought fit by the court.

16. Some social and child welfare agencies made a complaint before us that the proceedings for appointment of a prospective adoptive parent as guardian of the child drag on for months and months in some district courts and almost invariably they take not less than five to six months. We do not know whether this is true, but if it is, we must express our strong disapproval of such delay in disposal of the proceedings for appointment of guardian. We wish to impress upon the district courts that proceedings for appointment of guardian of the child with a view to its eventual adoption, must be disposed of at the earliest and in any event not later than two months from the date of filing of the application. We would request the High Court to call for returns from the district courts within their respective jurisdiction showing every two months as to how many applications for appointment of guardians are pending, when they were filed and if more than two months have passed since the date of their filing, why they have not been disposed of up to the date of the return. If any application for guardianship is not disposed of by the district courts within a period of two months and there is no satisfactory explanation, the High Courts must take a serious view of the matter. We were also informed that some district courts are treating applications for guardianship in a lacadaisical manner and are not scrupulously carrying out the directions given by us in our judgment. This defiance by the district courts of the directions given by us should not be tolerated by the High Courts and we would request the High Courts to exercise proper vigilance in this behalf.

17. There is also one other point which must be considered at this stage. Some social and child welfare agencies appearing before us pointed out that there were instances where the courts required the foreign parents wishing to take a child in adoption to come down to India for the purpose of meeting the child before approving the child for adoption. This insists once on the foreign parents coming down to India for giving their approval to the child to be taken in adoption, it was pointed out, is causing considerable hardship and inconvenience to the foreign parents, sometimes leading to the unfortunate situation that the foreign parents who are unable to come down to India might give up the idea of taking the child in adoption. There is considerable force in this argument urged on behalf of the social and child welfare agencies. It is obvious that foreign parents who belongs to the middle class group would find it difficult to come down to India for the purpose of seeing the child. In the first place, it would impose on them a certain amount of financial burden which may be irksome and sometimes, untolerable and secondly, it would be difficult for them to leave their place of work for the purpose of coming down to India, because they may not be able to get leave from their employer and if they have their own natural children, it may be difficult for them to leave their children behind by reason of there being no one to care of them. The Court dealing with an application for appointment of foreign parents as guardian need not therefore insist on the foreign parents or even one of them coming down to India for the purpose of approving the child. We are told that the courts sometimes insist on the foreign parents coming down to India for the purpose of seeing the child where the child is an older or handicapped child. But even in such cases it is not necessary to require the foreign parents to come down to India, because a complete dossier of the child consisting of photographs, detailed medical report, child study report and other relevant particulars is always forwarded to the sponsoring social and child welfare agency in the foreign country and it is after careful consideration of this dossier and a full and detailed discussion under the sponsoring social and child welfare agency that the foreign parents decide to accept the child to be taken in adoption and proceed further in the matter through the sponsoring social or child welfare agency. We would therefore suggest that, as far as possible, the foreign parents or even one of them need not be required to come down to India for the purpose of approving the child. Otherwise many foreign parents desiring to adopt an older or handicapped child might be deterred from doing so and such children who are ordinarily not favoured for adoption by Indian parents would be left without the warmth of family life.

18. That takes us to the last point raised on behalf of some of the social and child welfare agencies namely, that every effort must be made to give a child in adoption to Indian parents before considering the possibility of placing it in adoption with foreign parents. We pointed out in our Judgment that before any application of a foreigner for taking an Indian child in adoption is considered, every effort must be made by the recognised social and child welfare agency to find out placement for the child by adoption in an Indian family and whenever any Indian family approaches a recognised social or child welfare agency for taking a child in adoption, facilities must be provided by such social or child welfare agency to the Indian family to have a look at the children available with it for adoption and if the Indian family want to see the child study report in respect of a particular child, such child study report must also be made available to the Indian family in order to enable the Indian family to decide whether they would take the child in adoption. But the question is as to how this can be done efficiently and without any avoidable delay. One of the ways in which adoption by an Indian family can be facilitated is to set up a centralised agency in the State or even in a large city where there are several social or child welfare agencies. Each social or child welfare agency must feed information to the centralised agency in regard to the particulars of the children available with it for adoption and a combined list of children available for adoption with various social or child welfare agencies attached or affiliated to the centralised agency, should be circulated to all such social or child welfare agencies, so that if any Indian family comes to a social or child welfare agency for taking a child in adoption, such social or child welfare agency would be able to give full and detailed information to the Indian family as to which children arc available for adoption and with what social or child welfare agency. We are glad to find that this procedure has been adopted by social and child welfare agencies in Bombay. The Indian Association for Promotion of Adoption, Bombay has set up a Voluntary Co-ordinating Agency on an experimental basis and social and child welfare agencies in Maharashtra and especially in Amrawati, Bombay, Nasik, Nagpur and Pandharpur have joined this Voluntary Co-ordinating Agency. These social or child welfare agencies send to the Voluntary Co-ordinating Agency particulars of children available with them for adoption and the Voluntary Co-ordinating Agency maintains a register showing the names and particulars of such children and in addition, it also maintains a register of Indian adoptive parents. The Voluntary Co-ordinating Agency thus serves as a co-ordinating agency to promote Indian adoptions and all children registered with the Voluntary Co-ordinating Agency remain on its list for three months awaiting Indian parents. If Indian parents are not available for a particular child for a period of 3 months, such child is cleared for inter-country adoption. It would be desirable for social and child welfare agencies in other States also to form a similar Voluntary Co-ordinating Agency. We wholly endorse and recommend setting up of such Voluntary Co-ordinating Agency in each State and if circumstances so require, there may even be more than one Voluntary Co-ordinating Agencies in a State. The only caveat which we would like to enter is that the period of three months adopted by the Voluntary Co-ordinating Agency in Bombay for awaiting the arrival of Indian parents for taking a child in adoption, is perhaps too long. We have in our Judgment observed that is only if no Indian family comes forward to take a child in adoption within a maximum period of two months, that the child may be regarded as a available for inter-country adoption. But on further reflection we are of the view that even this period of two months may be regarded as a little too long. Where there is a Voluntary Co-ordinating Agency or any other Centralised Agency which maintains a register of children available for adoption as also a register of Indian adoptive parents, it would be enough to wait for a period of three to four weeks. The Voluntary Co-ordinating or Centralised Agency can immediately contact the Indian family which is on its register as prospective adoptive parents and inform them that a particular child is available for adoption. If within a period of three to four weeks, the child is not taken in adoption by an Indian family, it should be regarded as available for inter-country adoption. But even where it is not possible to find an Indian family which is prepared to take a child in adoption and it is cleared for inter-country adoption, the first priority for taking the child in adoption should be given to Indians residing abroad and if no such Indians are available, then to adoptive couples where atleast one parent is of Indian origin.

19. These were the only points raised for our consideration in the applications made on behalf of the various social and child welfare agencies. we have dealt with these points in some detail and we hope and trust that hereafter there will be no difficulty in faithfully implementing the directions given by us.

SCALE (PIL) 1981-97 1251

L.K. PANDEY *Appellant*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJ. AND R.B. MISRA, J.

PUBLIC INTEREST LITIGATION — ADOPTION — General Directions given (Reported in 1985(2) SCALE 849).

Order in the C.M. Ps.

1. We would give a general direction that in respect of the children who have been abandoned or brought prior to 27.9.85 in the States in which the application for guardianship is sought to be made with a view to eventual adoption, the court to which the application is made will satisfy itself where such children have been abandoned or brought within the State prior to 27.9.85 and if the Court is so satisfied, the requirement laid down by us in the main Judgment and the Supplementary Judgment that the children should not be allowed to be brought from one State to another for adoption except subject to certain conditions, as also the requirement that where the children sought to be adopted are abandoned or destitute children they should be cleared by the Juvenile Court, shall not be applicable to such children. The Court may for this purpose require the scrutinising agency to visit the Home or Homes where such children are kept with a view to assisting the court in determining whether such children were abandoned or brought within the State prior to 27.9.85. So also where the child sought to be adopted is claimed to be the child of unwed mother, the court before which the application for appointment of guardian of such child is pending, will satisfy itself of the said fact and if the court is so satisfied, clearance of the Juvenile Court will be dispensed with. All the other requirements set out in the main Judgment and the supplemental judgment will continue to be applicable.

2. This order shall be communicated immediately to all the District Courts in the country through the various High Courts.

Order dated February 13, 1986 in C.R.L. Misc. Petitions Nos. 681-683 of 1986 in W.P. (Crl.) No. 1171 of 1982. [1986(1) SCALE 352]

SCALE (PIL) 1981-97 1251

LAXMI KANT PANDEY *Petitioner*

VS

UNION OF INDIA *Respondent*

CORAM: P.N. BHAGWATI, CJ. AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — ADOPTION — Adoption to Foreign Parents (Reported in 1984(1) SCALE 159 & 1985 (2) SCALE 849) — Further clarifications given.

Judgment dated December 3, 1986 in Crl. Misc. Petition No. 6693 of 1986 and Crl. Misc. Petition Nos. 3141-42 of 1986 and Crl. Misc. Petition No. 4455 of 1986 with (Crl. M.P. Nos. 3868 & 4065/86 and Crl. M.P. No. 4064/86). [1986(2) SCALE 913]

Bhagwati, CJ.

Crl. M.P. No. 3141/86

1. This application has been filed by the Indian Council for Child Welfare for obtaining a direction that when it is required to act as a scrutinising agency by the Court, a certain amount should be directed to be paid to it for the scrutinising services rendered by it, since the scrutinising services would require employment of staff and other necessary expenditure. Though this application is made only by the Indian Council for Child Welfare, we apprehend that all other scrutinising agencies must also be facing the same difficulty. We would therefore direct that when the Court makes an order appointing a foreign parent as guardian of a child with a view to its eventual adoption in the foreign country, the Court will provide that such amount shall be paid to the scrutinising agency for its services as the Court thinks reasonable, having regard to the nature of the case and the extent and volume of the services rendered by the scrutinising agency. We think that in the case of an application for appointment of a foreign parent as guardian of a child the Court would be justified in directing payment of any reasonable amount varying between Rs. 450/-and Rs. 500/- but in appropriate cases where the Court so thinks fit, such amount may even exceed Rs. 500/-. This amount shall be directed to be paid to the scrutinising agency by the recognised placement agency which has processed the application of the foreign parent for being appointed guardian of the child with a view to its eventual adoption and the such placement agency shall have the right to recover such amount from the foreign parent whose application for guardianship it has processed. This direction will also apply *mutatis mutandis* in cases where an Indian parent makes an application for appointing himself or herself as guardian of a child or a Hindu parent applies for permission to adopt a child under section 9 sub-section (4) of the Hindu Adoptions and Maintenance Act, 1956 and the case is referred to a scrutinising agency by the Court, but in such cases the amount to be fixed by the Court for meeting the expenses of the scrutinising agency shall not exceed Rs. 150/-. Both in the case of an application on behalf of a foreign parent as also in the case of an application on behalf of an Indian or Hindu parent, a copy of the order made by the Court appointing the scrutinising agency shall be supplied to the scrutinising agency immediately after the order is made, together with the papers and documents submitted to the Court in support of the application for appointment of guardian or for permission to adopt.

Crl. M.P. 3142/86

2. This application has been made by the petitioner since according to the petitioner there have been instances of illegal sales of babies. We may point out that by its very nature it is not possible to devise a fool-proof formula which will in all cases prevent illegal sales of babies but a procedure can and must be formulated which will definitely reduce the possibility of such illegal sales. With this end in view, we would direct that all nursing homes and hospitals which come across abandoned or destitute children or find such children abandoned in their precincts or otherwise shall immediately give information in regard to the discovery or find of such children to the Social Welfare Department of the concerned Government where such nursing homes or hospitals are situate in the capital of the state and in other cases to the Collector of the District and copies of such intimation will also be sent to the Foster Care Home where there is such a home run by the Government as also to the recognised placement agencies functioning in the city or town where such nursing homes or hospitals are situate. The Social Welfare Department as also the Collector of the District will take care to ensure that this direction given by us is followed by the nursing homes and hospitals within their jurisdiction and if necessary intimation in regard to the discovery or find of abandoned or destitute children, if not sent by any particular nursing homes or hospitals to the Foster Care Home and the recognised placement agencies shall be forwarded to them by the Social Welfare Department and the Collector of the District.

3. The Foster Care Home run by the Government as also the recognised placement agencies in the capital of the State or in the District will also exchange with one another information regarding Indian parents who wish to take children in adoption so that the Foster Care Home as also each recognised placement agency will have a consolidated list of such Indian parents. Each Indian parent who is registered with the Foster Care Home or a recognised placement agency as a prospective parent wishing to take a child in adoption and who has been informed by the recognised placement agency that a child is available for adoption will be entitled to information about all the children available for adoption in the group specified by him, according to the consolidated list maintained by the recognised placement agency.

Crl. M.P. No. 4455/86

4. This Court directed in paragraph 22 of the main judgment dated 6th February 1984 that the notice of the application for guardianship should not be published in any newspaper and this was reiterated in the Supplementary judgment dated 27th September, 1985, because otherwise the biological parents would come to know as to who are the parents taking the child in adoption. The question raised in the present application is as to whether this direction should be confined only to cases of adoption by foreign parents or it should be extended to cover cases where Hindu parents seek to take a child in adoption and make an application to the Court for that purpose. We are of the view that having regard to the object and purpose for which this direction has been given, it cannot be confined to the case of adoption by foreign parents. It must also cover the cases where Hindu Parents make an application under section 9 sub-section (4) of the Hindu Adoptions and Maintenance Act, 1956. We would, therefore, clarify the direction given by us and direct that notice of an application under Section 9 sub-section (4) of the Hindu Adoptions and Maintenance Act, 1956 will also not be published in any newspaper. The present application will stand disposed of accordingly.

Crl. M.P. 4064/86

5. This application has been filed by the Karnataka State Council for Child Welfare complaining that the object and purpose for which various directions were given by this Court in its main Judgment dated 6th February, 1984 and the supplemental Judgment dated 27th September, 1985 is being defeated by the practice which has been adopted in some places in the State of Karnataka where unrecognised agencies are using recognised placement agencies as post offices for processing cases in respect of children which are in the custody of the unrecognised agencies and with which the recognised placement agencies have nothing to do. The result of this practice is that the recognised placement agencies merely act as conduit pipes for making and processing applications for appointment of a foreigner as guardian of a child, even though the child is not with them at all and they are not even in contact with the foreign sponsoring agency or the foreigner wishing to take the child in adoption. This practice, if it is prevalent in any part of the state of Karnataka or for that matter, in the country, must meet with our disapprobation. It is the recognised placement agency which has to prepare the child study report including the medical report for submission to the Court alongwith the application for appointment of the foreigner as guardian of the child and this obviously cannot be done unless the child is with the recognised placement agency, because the recognised placement agency has to observe the child and gather full information about it in order to be able to make the report for submission to the Court. The recognised placement agency must therefore necessarily have the custody of the child for a period of at least one month before it can prepare a really genuine and satisfactory child study report alongwith the medical report. If we permit the recognised placement agency to act merely as post office or conduit pipe for making and processing an application for guardianship on behalf of an unrecognised agency, it would lead to manifold evils which it has been our endeavour to eliminate. We would therefore direct that no recognised placement agency shall make and process an application for appointment of a foreigner as guardian of a child with a view to its eventual adoption, unless the child has been in the custody of the recognised placement agency for a period of at least one month before the making of the application and it shall not be permitted to act merely as a post office or conduit pipe for the benefit of an unrecognised agency.

Cr. M.P. No. 4065/86

6. This application of the Delhi Council for Child Welfare seeks clarification in respect of certain observations made by this Court in paragraph 6 of the supplemental judgment dated 27th September 1985. This Court, while providing that children who are found abandoned should not be assumed to be free for adoption but they must be produced before the Juvenile Court so that further inquiries can be made and their parents or guardians can be traced, directed the Juvenile Courts "that when children are selected for adoption, release order should be passed by them expeditiously and without delay and proper vigilance in this behalf must be exercised by the High Court". The Delhi Council for Child Welfare has pointed out in this application made by it for clarification that the Juvenile Courts are construing this observation literally and mechanically and are taking the view that release orders in respect of the children produced before them are to be passed "expeditiously and without delay" only in cases where it can be said that the children "are selected for adoption" and since no child can possibly be offered in adoption unless it is declared legally free for adoption by the Juvenile Court, this direction given by the court for expeditious passing of release orders in cases where "children are selected for adoption" has become meaningless and futile and the Court should suitably modify it. This contention raised on behalf of the Delhi Council for Child Welfare is well-founded, because obviously no child can be offered for adoption unless the release order is passed in respect of it and it would therefore be futile to provide that release order shall be passed expeditiously and without delay in case of children selected for adoption. We would therefore modify this direction given by us in paragraph 6 of the supplemental Judgment dated 27th September 1985 by providing that whenever a child is produced before the Juvenile Court by a recognised placement agency for a release order declaring that the child is abandoned or destitute so as to be legally free for adoption, the Juvenile Court must in all such cases complete the inquiry within one month from the date of the application and proper vigilance should be exercised by the High Court for the purpose of ensuring that this new direction given by us is complied with by the Juvenile Courts. We would ask the High Courts to call for monthly reports from the Juvenile Courts stating as to how many applications for release orders, that is for declaring children abandoned or destitute, are pending before each Juvenile Court, when they were filed and if they have not been disposed of within one month, what is the reason for the delay. We are very anxious that in respect of abandoned or destitute children, there should be no undue delay in offering them for adoption to Indian parents and, failing Indian parents, to foreign parents, because it is absolutely essential that such children should be able to secure love and affection of adoptive parents at the earliest. Indeed, nothing can take the place of love and affection of parents and every effort must therefore be made to see that no procedural delays hold up the process of such children being taken in adoption. This new direction given by us will also be applicable in cases where, the Juvenile Court not being in existence, application for release order is required to be made to the Social Welfare Department in the capital of the State or to the Collector of the District in other places. The Social Welfare Department or the Collector, as the case may be, will dispose of such application within one month of its making.

Crl. M.P. No. 6693/85

7. There were several points raised in this application filed on behalf of Church of North India, Holy Cross Social Service Centre, Mission-arise of Charity and Delhi Council for Child Welfare. The first point related to a practice which is being followed in Delhi in regard to making of an application for appointment of a foreigner as guardian of a child with a view to its eventual adoption. The practice which is followed in Delhi is that the application for appointment of a foreigner as guardian is required to be signed by the representative of the recognised placement agency not only as Attorney of the foreigner but also in his personal capacity, so that the application becomes an application for appointment of the foreigner as well as the representative of the recognised placement agency as joint guardians of the child. The Court granting the application also appoints the foreigner as well as the representative of the recognised placement agency as joint guardians and both continue as joint guardians until the child is adopted by the foreigner in his own country. This procedure entails a continued obligation on the part of the recognised placement agency which is totally unnecessary and in fact, such procedure is not followed in any other part of the country. It would in our opinion be sufficient to ensure the eventual adoption of the child and its proper care and welfare in the meantime, if a bond is taken from the recognised placement agency to secure performance of the obligations and conditions laid down by the Court. We would therefore direct that the court entertaining an application for appointment of a foreigner as guardian of a child should not require the representative of the recognised placement agency processing the application to join the application as a co-petitioner nor should the court insist on appointing such representative as joint guardian of the child alongwith the foreigner. Where a representative of the recognised placement agency has already been appointed joint guardian prior to the making of this order, he or she will stand discharged on the child being adopted by the foreign parents.

8. The second point raised on behalf of the applicants was in regard to the delay which is at present occurring in the procedure for giving a child in adoption to a foreigner in view of the time schedule fixed by the court in the main judgment dated 6th February, 1984 and the supplemental judgment dated 27th September 1985. The applicants contented that the entire process laid down by the court is a long-drawn out process running into a period of about 8 to 9 months and that would defeat the object of expedition in giving a child in adoption. The applicants pointed out that under our judgments, where there is a child surrendered by the biological parents, a minimum period of three months is allowed to the biological parents to reconsider their decision and in case of abandoned or destitute child, a period of three months is provided for the Juvenile Court, Social Welfare Department or the Collector to clear the child and declare it free for adoption and after the child is declared free for adoption, a maximum period of two months is provided to find an Indian family for the child — which period is now curtailed to three to four weeks — and there after it takes another four weeks in mail for sending the child study and medical reports to the sponsoring agency abroad for being handed over to the foreigner for his approval and awaiting the receipt of approval and then a further period of two months is allowed for the court to process the case and thereafter on an average it takes another month or more to get the passport and visa formalities completed. It thus takes about 8 to 9 months after the abandonment of the child before the child is able to join its adoptive parents. This is, according to the applicants, too long a period and the directions given by us should be modified with a view to curtailing this period. We agree that the point raised on behalf of the applicants deserves serious consideration. We would therefore direct that in cases where a child is relinquished by its biological parents or by an unwed mother under a Deed of Relinquishment executed by the biological parents or the unwed mother it should not be necessary to go through the Juvenile Court or the Social Welfare Department or the Collector to obtain a release order declaring the child free for adoption but it would be enough to produce the Deed of Relinquishment before the court which considers the application for appointment of a foreigner as guardian of the child. It is only where a child is found abandoned or is picked up as a destitute that the procedure of going through the Juvenile Court or the Social Welfare Department or the Collector would have to be adopted. As soon as abandoned or destitute child is found by a social or child welfare agency, a report should be immediately lodged with the local police station along with a photograph of the child. The Inspector General of Police or the Commissioner of Police, as the case may be, should instruct every police station within his jurisdiction to immediately undertake an inquiry for the purpose of ascertaining and tracing the parents of the child in respect of which the report is made and such inquiry must be completed within one month of the report being lodged with the police station. Meanwhile, the social or child welfare agency which has found the abandoned or destitute child may make an application to the juvenile court or to the Social Welfare Department or the Collector, as the case may be, for a release order declaring that the child is legally free for adoption and since the report of the inquiry to be made by the police has under this direction to be completed within one month, it should be possible for the juvenile court or the Social Welfare Department or the Collector to make a release order declaring the child legally free for adoption within a period of five weeks from the date of making the application. If, as a result of the inquiry by the police the biological parents are traced, the juvenile court or the Social Welfare Department or the Collector, as the case may be, will issue a notice to the biological parents and give them an opportunity to reconsider their decision after explaining the implications of the child being declared legally free for adoption. But, this opportunity shall be availed of by the biological parents within a period of one week and no more. This procedure will considerably reduce the time taken up in giving an opportunity to the biological parents to reconsider their decision as also in getting the child cleared for adoption by the juvenile court or the Social Welfare Department or the Collector. Whilst the application for a release order is pending before the juvenile court or the Social Welfare Department or the Collector, the recognised placement agency which has found the child or to which the child is transferred by the social or child welfare agency finding the child, may proceed to explore the possibility of offering the child in adoption and the child may be offered simultaneously to Indian parent as well as foreign parents, subject to the clearance of the child for adoption by the juvenile court or the Social Welfare Department or the Collector. The recognised placement agency need not wait until the release order is made by the juvenile court or the Social Welfare Department or the Collector, before offering the child in adoption, because otherwise even with the reduced time limit which we have now provided, it would take at least six weeks before the child can be offered in adoption. This time-lag of six weeks can be eliminated if the child is allowed to be offered in adoption even while the application for release order is pending and this would also eliminate the delay of about two months which would occur if the child is not allowed to be offered in adoption to the foreign parents until after the effort to find an Indian parent for the child has failed. If this procedure is followed it should be possible to find an Indian parent or, failing that a foreign parent to take the child in adoption within a period of about 6 to 8 weeks from the time when the abandoned or destitute child is found by the concerned social or child welfare agency. We are informed that this procedure is already being followed in Bombay and, in our view, it should be adopted in all jurisdictions.

10. We then turn to the third point raised on behalf of the applicants and that relates to transfer of children from one State to another for the purpose of being given in adoption. We have already dealt with this subject in paragraph 7 of the supplemental judgment dated 27th September 1985 and we do not propose to depart from what we have said in that paragraph of the judgment. But we should like to make it clear that where an abandoned or destitute child is found by a recognised placement agency or is brought to it by another social or child welfare agency or individual, it should be open to such recognised placement agency to transfer the child to its branch in another State after the completion of the inquiry by the juvenile court or Social Welfare Department or the Collector, as the case may be. Where such recognised placement agency has an associate social or child welfare agency in another State, it should be open to the recognised placement agency to transfer the child to such associate social or child welfare agency in the other State, provided firstly, that the inquiry is completed by the juvenile court or the Social Welfare Department or the Collector and a release order is passed, and secondly, the associate social or child welfare agency has been notified by the recognised placement agency as its associate to the Government of the State where the recognised placement agency is functioning as also to the Government of the State where the associate social or child welfare agency is operating. If, for any compelling reason, it becomes necessary for the recognised placement agency to transfer a child either to its own branch or to an associate social or child welfare agency before completion of the inquiry by the juvenile court or the Social Welfare Department or the Collector, as the case may be, the recognised placement agency shall be allowed to do so after obtaining permission of the juvenile court or the Social Welfare Department or the Collector in that behalf.

11. We would also direct the Government of India to publish at least once in a year a list of recognised placement agencies and their associate social or child welfare agencies operating in each State in two leading newspapers having wide circulation in that State, on in the English language and the other in the regional language of that State, so that the people may know which are the recognised placement agencies and their associates which are functioning in that State. We would also direct the Government of India to send to the District Courts in each State through the High Court a list of the recognised placement agencies functioning within the State together with the names and particulars of their associate social or child welfare agencies. Such list must be supplied to the District Judges at least once in a year and when ever any changes or modifications are made in the list, such change or modifications must be intimated to the District Judges through the High Court.

12. One other point raised on behalf of the applicants was that the outer limit of Rs. 4,000/- fixed by the Court in the supplemental judgment dated 27th September 1985 for reimbursement of expenses including legal expenses, administrative expenses, preparation of child study report, preparation of medical and I.Q. Reports, passport and visa expenses and conveyance expenses, was inadequate, particularly having regard to the high fees charged by lawyers and increase in the visa charges for United States and some other countries and that this outer limit should, therefore, be raised from Rs. 4,000/- to Rs. 6,000/-. There is force in this submission made on behalf of the applicants, because there is no doubt that the fees of lawyers have gone up quite high and the visa expenses have also more than doubled in recent times. We, therefore, agree that the recognised placement agency processing the application of a foreigner for being appointed guardian of a child with a view to its eventual adoption, should be entitled to recover from the foreigner, cost incurred in preparing and filing the application and prosecuting it in court including legal expenses, administrative expenses, preparation of child study report, preparation of medical and I.Q. reports, passport and visa expenses and conveyance expenses and that such expenses may be fixed by the court at a figure not exceeding Rs. 6000/-.

13. The applicants also drew our attention to the case of foreigners living in India for one or more years and stressed the difficulty involved in requiring their cases to be sponsored by a foreign social or child welfare agency and the home-study report in their cases to be prepared by such sponsoring foreign agency. This difficulty is a genuine difficulty. It would be quite impracticable to ask a foreigner living in India and wishing to take an Indian child in adoption to obtain a home-study report from an agency based in his home country. It would be impossible for any foreign social or child welfare agency to sponsor the case of such foreigner who is living in India and it would equally be impossible for any such social or child welfare agency to prepare a home-study report in respect of such foreigner. We would, therefore, direct that in case of a foreigner who has been living in India for one year or more, the home-study report and other connected documents may be allowed to be prepared by the recognised placement agency which is processing the application of such foreigner for guardianship of a child with a view to its eventual adoption and that in such a case the court should not insist on sponsoring of such foreigner by a social or child welfare agency based in the country to which such foreigner belongs nor should a home-study report in respect of such foreigner be required to be obtained from any such foreign social or child welfare agency. The home-study report and other connected documents prepared by the recognised placement agency should be regarded as sufficient.

14. The last point raised on behalf of the applicants arises out of paragraph 12 of the supplemental judgment dated 27th September 1985. We pointed out in that paragraph of the supplemental judgment that ordinarily the court entertaining an application on behalf of a foreigner for being appointed guardian of a child with a view to its eventual adoption should not insist on making of deposit by the foreigner as and by way of security for due performance of the obligations undertaken by him, but in an appropriate case, the court exceptionally pass an order requiring him to make such deposit. We observed that the execution of a bond would ordinarily be sufficient and we made two alternative suggestions which may be implemented in regard to the execution of such bond. We have considered this question once again in view of the plea raised on behalf of the applicants and we are of the view that the court need not insist on security or cash deposit or bank guarantee and it should be enough if a bond is taken from the recognised placement agency which is processing the application and such recognised placement agency may in its turn take a corresponding bond from the sponsoring social or child welfare agency in the foreign country. Ordinarily, the sponsoring social or child welfare agency in the foreign country would honour the bond in case the condition of the bond is broken, because, obviously: if it fails to do so, no recognised placement agency in India would in future deal with it and moreover the name of such foreign social or child welfare agency would be liable to be deleted from the list of foreign social or child welfare agencies which are recognised as sponsoring agencies for the purpose of adoption.

15. These were the only points raised for our consideration in the applications made on behalf of various social and child welfare agencies. We have dealt with these points in some detail and we hope and trust that the clarifications given by us will go a long way towards reducing the delay in the procedure to be followed in giving a child in adoption to a foreigner and will also at the same time protect and safeguard the interest of the child by preventing any possibility of abuse.

SCALE (PIL) 1981-97 1259

LAXMI KANT PANDEY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: R.N. MISRA AND G.L. OZHA, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — Adoption to Foreign Parents — (Reported in 1984 (1) SCALE 159, 1985 (2) SCALE 849, 1986 (1) SCALE 352, 1986 (2) SCALE 913 — Non-implementation of certain directions — Court directs compliance within 10 weeks as otherwise it shall be treated as contempt.

1. The question of foreign adoption of Indian children has still not been legislated upon and has been left to be guided by the judgment of this Court in Lakshmi Kant Pandey vs Union of India 1984(2) S.C.R. 795. In that case this court gave certain directions

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Order dated September 19, 1989 in Criminal Misc. Petition No. 3357 of 1989 in Criminal Writ Petition No. 1171 of 1982. [1989(2) SCALE 691] in the matter of establishment of Central Adoption Resource Agency and State Level Agency for promotion of adoption. The same judgment also directed preparation of a list of foreign adoption sponsoring agencies to be recognised/licensed by the Central Government and circulation thereof to the High Courts and Social and Child Welfare Agencies located at different places in the Country. There was a further direction in the said judgment that recognition of Indian Sponsoring Agencies, Organisation and Institution for inter-country adoption of orphan children of India will be prepared within the time specified. Alongwith those directions, there was a direction for preparation and maintenance of the records of the adoptive parents as well as of the Indian orphans so adopted and despatch of the same to appropriate Embassies and High Commissions for the purpose of follow up action and answering the well being of the adopted out children. A time-frame had been indicated in the judgment. Apart from these directions either to the State Govts. or the Central Govt. in the welfare Ministry, the High Courts were requested to make Rules on the basis of the rules prevalent in Delhi and Bombay High Court Following the main judgment further directions in the same case were given which are reported in 1985(3) Supp. S.C.R. 71. These dealt with the recognition of representations of Foreign Adoption Agencies with liberty to operate in India subject to what has been observed in the judgment. Then came another direction made in the same case between the parties which is reported in 1987(1) S.C.C. 66. On this occasion this Court gave a direction to all the Dist. Collectors in India to ensure enlisting of abandoned/destitute children by the nursing homes/hospitals within their respective jurisdictions, with the Foster Case Homes or the Social Welfare Departments of the concerned Govt. Publication of the list of recognised Indian Placement Agencies and their associate agencies in two local leading news papers (one in English and the other in the relevant regional language) at least annually; monthly reports by the juvenile courts in India to be submitted to their respective High Courts about the filing, disposal and pendency of the applications for release order of the abandoned children were directed Grievance is now made by the petitioner that these directions have remained in the pages of the law reports and have not been implemented to any extent. Though he has applied for contempt action, at the hearing he fairly states that this may not be treated as an application for contempt but we may give further directions for complying with the various directions.

2. We call upon the Central and the various State Govts. to comply with the various directions contained in the main judgment and the two subsequent orders within 10 weeks from today and make a return to the Registry of this courts through their counsels of compliance. While we condone the past lapses, we contion all concerned that failure to comply with the present orders shall be seriously viewed and shall be treated as contempt.

3. The Secretary in Welfare Ministry of the Union of India and every Chief Secretary and Registrar or every High Court shall be informed of this order within one week from now to enable them to comply with his order.

SCALE (PIL) 1981-97 1261

LAXMI KANT PANDEY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA, M.M. PUNCHHI AND S.C. AGRAWAL, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — Adoption to Foreign Parents — Non-compliance with directions issued on 19.9.89 (Reported in 1989 (2) SCALE 691) — Court issues notice to show cause why contempt action shall not be initiated.

1. The Ministry of Social Welfare as represented by Ms. Subhashini is the appropriate Ministry to be impleaded in the matter and, therefore, notice to the Ministry of Home Affairs is withdrawn.

2. We have seen the report of the Registry which indicates that apart from Union of India six States have complied with the direction of 19th September, 1989. We now find that notice had been issued on the basis of the order dated 19.9.89. There is no compliance by the following parties and the State Governments:

(1) Indian Council of Child Welfare,
4, Din Dayal Upadhayay Marg,
New Delhi.

(2) Indian Council of Social Welfare,
1, Tughlak Lane, New Delhi.

(3) Home Secretary,
State of Andhra Pradesh,
Hyderabad.

(4) Law Secretary,
State of Bihar,
Patna.

(5) Home Secretary,
State of Haryana,
Chandigarh.

(6) Home Secretary,
State of Jammu & Kashmir,
Srinagar.

(7) Secretary,
Law & Judiciary Department,
State of Maharashtra.

(8) Chief Secretary,
State of Karnataka,
Bangalore.

(9) Chief Secretary
State of Kerala,
Trivendrum.

(10) Law Secretary,
State of Madhya Pradesh,
Bhopal.

(11) Chief Secretary,
State of Manipur,
Imphal.

(12) Home Secretary,
State of Orissa,
Bhubaneshwar.

(13) Home Secretary,
State of Punjab,
Chandigarh.

(14) Chief Secretary,
State of Rajasthan,
Jaipur.

(15) Home Secretary,
Delhi Administration,
Delhi.

(16) Joint Registrar,
High Court of Judicature at Allahabad,
Allahabad.

(17) Home Secretary,
State of Gujarat,
Ahmedabad.

3. The Registary is directed to issue notice to the appropriate Officer calling upon him/it to show cause by appearing in person in this Court on 9th February, 1990, at 10.30 a.m. as to why contempt action shall not be

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Order dated January 19, 1990 in Crl. Misc. Petition No. 3357 of 1989 in W.P. (Crl.) No. 1171 of 1982. [1990(1) SCALE 144] initiated.

4. Notices shall be issued for the first time to the following States bringing to their notice our order dated 19th September, 1989 and these would not be the same notices as issued to the other parties. The States & Union Territories on whom the notices shall be served:

(1) Chief Secretary,
Nagaland.
(2) Chief Secretary,
Meghalaya.
(3) Chief Secretary,
Sikkim.
(4) Chief Secretary,
Mizoram.
(5) Chief Secretary,
Arunachal Pradesh.
(6) Chief Secretary,
Goa.

Union Territories:

(1) Chief Secretary,
Andman & Nicobar Islands.
(2) Chief Secretary,
Lakshadweep.
(3) Chief Secretary,
Dadra & Nagar Haveli.
(4) Chief Secretary,
Daman & Diu.
(5) Chief Secretary,
Pondicherry.

5. These notices shall also be returnable on the same day.

SCALE (PIL) 1981-97 1262
LAXMI KANT PANDEY *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: RANGANATH MISRA, M.M. PUNCHHI AND S.C. AGRAWAL, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — JUVENILE JUSTICE ACT, 1986 — Court directs that w.e.f 1.9.1990, the Juvenile Courts under the Children Act would no longer deal with the matters relating to children concerned and the Board constituted under the Act of 1986 shall be the appropriate authority for such purpose.

1. The remaining States and Union Territories served in terms of the Court's order are Arunachal Pradesh, State of West Bengal and the Union Territories of Andaman & Nicobar Islands and Lakshadweep as also Dadra and Nagar Haveli. All these States & Union Territories have now entered appearance and have filed their affidavits. In view of the fact that there has been compliance with the notice of the Court the contempt proceedings are dropped.

2. A petition filed on behalf of the All India Lawyers' Union, Tamil Nadu, Madras, has brought to the notice of the Court the fact that at the time the main judgment was delivered the operative law was contained in the Children's Act and the Juvenile Court was authorised to deal with the Children concerned. With the enforcement of the Juvenile Justice Act. 1986, u/s 63 the provisions of the earlier law have been repealed as Chapter III of the Juvenile Justice Act, 1986, has contained provisions for neglected juveniles. Under this Chapter the power to deal with relevant aspects vests in the Board constituted under that Act and, therefore, reference made in the main judgment to the Children's Act in regard to

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Order dated July 12, 1990 in Criminal Misc. Petitions Nos. 3357/89, 783, 1712, 1713/89 & 2045/90 and W.P. (Crl.) Nos. 1171 of 1982. [1990(2) SCALE 64] production of neglected juveniles and the procedure adopted to be followed in regard to such children including power to commit them to suitable custody now vest in the Board. The main judgment shall, therefore, be deemed to have been modified by operation of the law and reference made to Juvenile Courts for such purposes shall be taken to be to the Board under Juvenile Justice Act, 1986. We would like to clarify the position that as a result of the change in the law the Juvenile Courts under the Children Act would no longer deal with these matters and the Board constituted under the Juvenile Justice Act, 1986 shall be the appropriate authority for such purpose. This alteration shall be operative from 1st of September, 1990 so that adequate notice will be available of this change and for the purpose of informing the courts and the people dealing with this matter, we direct that this part of the order shall be given adequate publicity in law journals and the Registrar General shall have it otherwise publicised. The matter shall now be called on 21.9.1990.

SCALE (PIL) 1981-97 1263

LAXMIKANT PANDEY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA, CJI, M.H. KANIA AND KULDIP SINGH, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — CHILDREN'S ACT, 1960 — JUVENILE JUSTICE ACT, 1986 — Adoption by Foreign Parents — Further directions given.

1. In Laxmikant Pandey v. Union of India 1984(2) SCR 795 this Court laid down the procedure to be followed in adoption of children by foreigners. The Court observed the fact that children are a supremely important national asset and the future well-being of the nation depends upon how the children grow and develop. It quoted with approval the report of the Study Team on Social Welfare where it was said:

> "The physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages."

This Court also quoted with approval from the National Policy for the Welfare of Children where it was said:

> "The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that out children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice."

2. Thus saying, this Court laid down the procedure to be followed and while doing so, that Court referred to recognised child welfare agencies and provided for their licensing or registration by the Central Government.

Order dated August 14, 1991 in Crl. Misc. Petition Nos. 3352, 3475, 2045, 5704, 8661, 8842, 9122 of 1990 & 2838 of 1991 in W.P. (Crl.) 1171 of 1986. [1991(2) SCALE 321]

Petitioners in this application are some of the licensed welfare agencies contemplated under the judgment of this court and petitioner No.2 is the Central Voluntary Adoption Resources Agency which is a coordinating unit base at Delhi.

3. In these applications petitioners have made the following prayers:

(a)(i) All Government/juvenile homes, nursing homes and hospitals - Government or private will apply for declaration of a child as abandoned and free for placement and if the parents of the child are not known, such children should be transferred to the recognised institution/placement agency as required for by them within a fixed time frame;

(ii) all recognised placement agencies depending upon their capacity to accommodate and care for those children after accounting for their age and qualification should be allowed to seek transfer of those children from Government/juvenile courts and nursing homes/hospitals and such institutions should be obliged to transfer the children to such placement agencies;

(iii) Juvenile Welfare Boards/Courts should allow the aforesaid transfers in favour of the recognised agencies for rehabilitation through guardianship/ adoption from VCAs/CVARAs or otherwise;

(iv) Juvenile Welfare Boards/Courts should not disturb the custody of children abandoned directly with the recognised placement agencies when approached for declaring them as abandoned and free for placement and such orders may be passed ex parte and confirmed after notice to the concerned parties;

(b)(i) Quota fixed by the Central Government for placement of children with Indian families may be quashed as being contrary to the decision in Laxmikant Pandey's case;

(ii) in the alternative, if this Court upholds the validity of the circular fixing the quota, the percentage may be suitably reduced;

(iii) this court may direct that if the quota is to be fixed, children with handicaps, medical problems and other drawbacks should be excluded from the total count as also girls above one year and boys above two years of age should be excluded from counting;

(c) The State Governments and the various Union Territories should be directed to issue birth certificates based up on attested copies of court's certificate (decree), adoption deed or on the basis of affidavits of officials of the licensed agencies;

(d) This Court may approve by way of revision of expenses by about 25% with effect from the date of the application and another 10% increase annually to enable the agencies to maintain high standards of care for the children;

(e) The Indian children adopted abroad or to be allowed to retain their citizenship/nationality till they attain the age of majority wherever they should exercise their option one way or the other;

(f)(i) The Central Government should be directed to act by itself or through the State/Union Territory Governments to issue show cause notice before refusing to extend recognition and grant personal hearing before taking official action and reasoned orders should be made in support of such action;

(ii) In the event of cancellation of recognition a time frame should be fixed to clear all the cases already in the pipeline for being processed;

(iii) An appellate authority should be prescribed for challenge of governmental action as stated above;

(g)(i) The Court may direct stay of governmental action in the matter of setting up the Central Adoption Resource Agency (CARA) and ultimately hold that there was no longer any need for such an agency in view of the fact that many private agencies were not available to monitor the programme.

4. Notice was ordered on these petitions on September 21, 1990, and these several months that have followed have been taken by different State Governments and Union Territories and others to place their affidavits for consideration of this Court.

5. We have heard counsel for the appearing parties at length. Before we deal with several prayers placed before the Court for consideration it is perhaps necessary to refer to the provisions of the Children's Act of 1960 and the Juvenile Justice Act of 1986. The scheme of these two Acts is not very different. The definitions of 'neglected child' and 'neglected juvenile' is absolutely the same. The mechanism for administering the statutes is also more or less the same. Under section 4(1) of the Children's Act, a Child Welfare Board is intended to take charge of neglected children. Under section 4(1) of the Juvenile Justice Act a Welfare Board for the neglected juveniles is similarly contemplated. Sub-sections (3) and (4) of either Act authorise the Board to function as a Bench of Magistrate and confers on such Board certain powers under Criminal Procedure Code conferable on a Metropolitan Magistrate or a Judicial Magistrate of the First Class. Section 9 of the Children's Act contemplates of Children's Homes and detailed provisions have been made in the matter of setting up of such homes and management thereof. Section 11 contemplates of Observation Homes. Chapter III deals with neglected children. Under Chapter II of the Act 1986 provision has been made for setting up of Juvenile Homes (s. 9), Special Homes (s.10) and Observation Homes (s.11). Both the Acts provide for After Care Organisations.

6. Though these two statutes in recognition of the importance of children to society have made these beneficial provisions, nothing concrete and substantial appears to have been done yet for implementing either statute in a serious way. The Children's Act has been operative for more 30 years while the Act of 1986 is in force for about five years. Yet most of the provisions in the two statutes are still to be worked out in a real way.

7. The Union of India has set up a Department of Women and Child Development and most of the States and Union Territories have corresponding departments, yet full coordination has not been achieved. The responsibility of administering the two statutes is not properly shared. Monitoring seems to be very much wanting.

8. In course of hearing of this petition we asked learned Additional Solicitor General appearing for the Union Government to tell us as to what happens to the children - both boys and girls - who are lodged in the Homes when they cease to be children under the statute. It may be pointed out that under the Children's Act boys upto 16 and a girl upto 13 years come within the definition of "Child". If `children' within the meaning of the term are lodged in various types of homes indicated in the two statutes what exactly happens to them when they cease to be children by passing of time has remained an enigma in the absence of a clear answer. Obviously no provision has been made in these two Acts to meet such a situation. Is it the intention of the statutes then that once a boy or a girl ceases to be a child and does not come within the purview of the statutes he/she would have to be thrown out from the home on to the street as no more cared for?

What the, would be the effect of such a situation? Since that is not very relevant for disposing of this petition, we do not intend to proceed with that aspect any longer.

9. We are inclined to keep the handicapped children out of the purview of the judgment of this Court. We do not, however, agree that Indian citizenship should continue until the adopted child attains the age of majority and is legally competent to opt. Such a step would run counter to the need of quick assimilation and may often stand as a barrier to the requirements of the early cementing of the adopted child into the adoptive family. In regard to the issue of the birth certificate of the adopted child we are of the view that such certificate should be obtained on the basis of application of the society sponsoring adoption. In most of these cases the registeration of birth may not be available because that would not have been done. We are of the view that on the basis of the application and such other material which may be relevant to be found in an affidavit to accompany the application made by the responsible person belonging to the agency the local magistrate should have the authority to make an order approving the particulars to be entered in the birth certificate and on the basis of the magisterial order the requisite certificate should be granted. This process should be done only after adoption is finalised and the particulars of the adopting foreign parents are available to be included. There is no point in having two birth certificate, one before the child is placed for adoption and another when adoption is completed. If the procedure for taking out a birth certificate is deferred until adoption is finalised the certificate can be obtained once for all. We are of the view that the Chief District Medical Officer (CDMO) may be involved in the matter of ascertainment of the age and the magistrate may ordinarily act on the certificate granted by the CDMO.

10. We gather that many of these agencies have indeed no child care facilities. In the even of such facilities not being available maintaining children in hygenic condition and in an environment which would be healthy for the children's growth and mental development would indeed be difficult. The licensing authority should ordinarily ensure that the registered agency has proper child care facilities so that an agency which does not have such facilities may over a period of years go out of the field.

11. The affidavit of the Union Government indicates that it never intended to fix any quota for the purpose of allowing renewal of registration or licence. In view of the clear statement in the affidavit we must hold that it is not the policy of the Government of India to require the agency to satisfy the condition of any quota. In fact the Government of India's circular letter is intended to emphasise on the feature that registered societies to entitle themselves for renewal of registration or licence should exhibit their involvement in the process of adoption and the authority should have evidence to satisfy that the agency is really involved in the activity.

12. We would accept the stand taken by the petitioner that in the event of registration/licence being proposed to be cancelled, an opportunity should be granted to such agency. That would answer the requirements of natural justice and would uphold a healthy scheme of administration. We have not been able to see any positive justification for opposition to the setting up of CARA. Such an institution would be an organisation of primacy and would work as a useful agency in the field. While we agree that there should be no keen competition for offering adoptions, regulated competition may perhaps keep up the system in a healthy condition. Existence of CARA in that field is, therefore, welcome. We do not agree with the stand of the petitioner that the scheme envisaged by the main judgment should be altered in this regard.

13. The judgment laid down a scale of expenses to be recovered by the agency offering placement for maintaining the child from the adoptive parents. There was some modification in 1986. Keeping in view the general rise in cost of living we are prepared to allow escalation by 30%. We do not, however, agree to an escalation of 10% every year. The matter may be reviewed once in three years so far as escalation of expenses is concerned.

14. Only one aspect is left for consideration and that is the petitioner's prayer for transfer of children from statutory homes to recognised agencies for placement. The children who can be transferred for such purposes would be those whose parents are not known, orphans and perhaps those who are declared as abandoned children. We have pointed out already that the homes are not set up in several States and areas. Even Juvenile Boards have not been properly functioning and the recognised agencies do not have the facility of child care. In these circumstances to order transfer of children from statutory homes to recognised agencies can indeed not be accepted as a rule. We are prepared to observe that as and when such a request is received from recognised agencies, the Juvenile Court or the Board set up under the Act may consider the feasibility of such transfer and keeping the interests of the child in view, the possibility of an adoption within a short period and the facilities available in the recognised agency as also other relevant features, make appropriate orders. A strait-jacket formula may very often be injurious to the interest of the child.

15. This order disposes of the petitions.

SCALE (PIL) 1981-97 1267

LAKSHMIKANT PANDEY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA, CJI, G.N. RAY AND A.S. ANAND, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — Adoption to Foreign Parents — Notice for contempt or non-impementation of orders — Notice discharged but Court gives further directions.

1. Notice for contempt is discharged on account of the following circumstances: (i) in the smaller State where there is no compliance, there is no scope of any foreign adoption taking place; and (ii) the major States have complied with the essential aspects of the direction; and Mr. Pandey says that there is no need to continue the contempt proceedings.

2. Heard Mr. Pandey, petitioner, in this case in person and the counsel for the Union of India as also the different States. We find that there are 3 main prayers made in this application; one is for locating the orphan-home under Central Act No. X of 1960. It is pointed out to us that though at the time of filing the petition in this case, such homes had not been established, by now such homes have been established in all States and Union Territories excepting State of Madhya

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Order dated November 20, 1991 in Crl. M P. No. 3475/91 in W.P. (Crl.) No. 1171 of 1982. [1992(1) SCALE 1316]

Pradesh and the Union Territory of Delhi. Counsel appearing for the State and the Union Territory have agreed before us that given 3 months' time such homes shall be established and the said Act shall be brought into force.

3. The next prayer is about the provision of funds for every orphan. Initially, it was Rs. 150 p.m. and with the filing of the petition and the matter being debated in Court, the amount has already been raised to Rs. 250 p.m. This amount covers all the expenses to be incurred on the child. Counsel for the Manipur States points out that the sum has now been raised even beyond Rs. 250 in some of these cases. At the moment, we do not intend to examine the sufficiency of the allotment but would suggest that the periodic revision may be made so that the requirements of children would not be overlooked and this revision may be once in 3 years and the first revision should be considered in the year 1992.

4. So far as the 3rd prayer is concerned, it is relating to the location of the Juvenile Welfare Board. Counsel for all the States have agreed that given a reasonable time, enforcement of the statute shall be ensured in every State and Union Territory. We direct that by 31.3.1992 in every State and Union Territory the Act should be brought into force and strict compliance of its provisions shall also be undertaken.

5. The other matters which are yet to be decided, should be listed in the 1st week of December, 1991 before a Bench of which either Dr. Justice Ray or Mr. Justice Anand is a member.

SCALE (PIL) 1981-97 1268

ALL INDIA JUDGES' ASSOCIATION *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA, CJI, A.M. AHMADI AND P.B. SAWANT, JJ.

JUDICIARY — CONSTITUTION — ARTICLE 32 — Application is by the All India Judges' Association and its working President for reliefs through directions for setting up of an All India Judicial Service and for bringing about uniform conditions of service for members of the subordinate judiciary throughout the country — Court issues certain directions.

Ranganath Misra, CJI.— This application under Article 32 of the Constitution is by the All India Judges' Association and its working President for reliefs through directions for setting up of an All India Judicial Service and for bringing about uniform conditions of service for members of the subordinate judiciary throughout the country.

2. Rule having been granted, notice was issued to the Union of India and all the States and Union Territories. Most of them have responded by making returns to the Rule. A few of the States have taken the stand that they would accept whatever this Court ultimately decides while others have placed their view points and yet some others have objected to the reliefs claimed.

3. Mr. Sriramulu, Chairman of the All India Judges' Association personally appeared at the hearing. Mr. Raju Ramchandran on our request appeared to support the petition as *amicus curiae*. At the hearing the Standing Counsel for the several

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Judgment dated November 13, 1991 in W.P. (C) No. 1022 of 1989. [1991(2) SCALE 969]

States and Union Territories have also been heard.

4. The plea for setting up of an All India Judicial Service was not seriously pressed and reliefs on the following heads were claimed:

1. Uniformity in the Judicial cadres in the different States and Union Territories;
2. An appropriate enhanced uniform age of retirement for the Judicial Officers throughout the country;
3. Uniform pay scales as far as possible to be fixed.
4. Residential accommodation to be provided to every Judicial Officer.
5. Transport facility to be made available and conveyance allowance provided.
6. Adequate perks by way of Library Allowance, Residential Office Allowance, and Sumptuary Allowance to be provided.
7. Provision for in service training to be made.

5. Administration of justice and organisation of courts was a provincial subject under the Government of India Act, 1935. The Constitution adopted the same scheme by providing in Entry 3 of List II of the Seventh Schedule the subject of administration of justice, constitution and organisation of all courts excepting the Supreme Court and the High Courts as a State subject. It was only under the 42nd Amendment in 1977 that Entry 3 from List II was deleted and the subject as such was taken as Entry 11-A in the Concurrent List. This had become necessary on account of the recommendation of the Law Commission that an All India Judicial Service should be set up.

6. Prior to independence, the District Judge used to be invariably a Member of the Indian Civil Service and his position in the district was superior to that of the District Magistrate. This position continued until the Indian Civil Service came to be abolished around 1946-47. This long association of the Civil Service with the judicial manning had led to service conditions of both to be tied up. Criminal justice at that time was handled by Magistrates who belonged to the Executive.

7. Under the Constitution, the concept of Rule of Law came to be accepted and developed. Article 50 prescribed the guideline of separating "the judiciary from the executive in the public services of the State. This position is the outcome of recognition of the fact that the judiciary is a class separate from the executive.

8. The control over the subordinate judiciary has been vested in the High Court and the administrative control has been construed to be complete and exclusive. Yet, in certain aspects, and particularly in regard to service conditions, the distinction has not been maintained. That is why very often when any specific aspect relating to conditions of service is taken up or benefits for judicial service is considered, comparative basis between the two is adopted for review. It is high time that this aspect is appreciated and the administrative authorities remain alive to it.

9. We shall first deal with the plea for setting up of an All India Judicial Service. The Law Commission of India in its 14th Report in the year 1958 said:

> "If we are to improve the personnel of the subordinate judiciary, we must first take measures to extend or widen our field of selection so that we can draw from it really capable persons. A radical measure suggested to us was to recruit the judicial service entirely by a competitive test or examination. It was suggested that the higher judiciary could be drawn from such competitive tests at the all-India level and the lower judiciary can be recruited by similar tests held at State ievel. Those eligible for these tests would be graduates who have taken a law

degree and the requirement of practice at the Bar should be done away with. Such a scheme, it was urged, would result in bringing into the subordinate judiciary capable young men who now prefer to obtain immediate remunerative employment in the executive, branch of Government and in private commercial firms. The scheme, it was pointed out, would bring to the higher subordinate judiciary the best talent available in the country as a whole, whereas the lower subordinate judiciary would be drawn from the best talent available in the State."

The Commission proceeded to further state:

"Recruitment to the higher judiciary at the All-India level in the manner suggested would be a powerful unifying influence and serve to counteract the existing growing regional tendencies. In this connection, attention may be drawn to the observations made by the States Reorganisation Commission in regard to the creation of the All India Services as a major compelling necessity for the nation. The Commission observed. The raison d'etre of creating All India Services, individually or in groups, is that officers on whom the brunt of responsibility of administration will inevitably fall, may develop a wide and All-India outlook.... The present emphasis on regional languages in the Universities will inevitably lead to the growth of parochial attitude, which will only be corrected by a system of training which emphasises the All-India point of view... It has not been very easy for us to balance these considerations, but we are definitely of the view that proportion of the higher judiciary should be recruited by competitive examination at the All-India level so as to attract the best of our young graduates to the judicial service. This measure will enlarge the field of selection and bring into the higher Judicial service a leaven of brilliant young men who will set a higher tone and level to the subordinate judiciary as a whole. The personnel so recruited will be subjected to an intensive training. The rest of the higher judiciary should, in our view, be recruited in part directly from senior members of the Bar, and partly by promotion from the lower subordinate judiciary."

Dealing with the same subject from a different angle, the Commission proceeded to say: training which he had to undergo. At the time of his first entry into service, his training was confined to matters pertaining to the revenue and criminal administration alone, but when he was taken over to the judicial side, generally an equally intensive training in civil law was given to him for a period of not less than eighteen months. There can be no doubt that a similar intensive judicial training given to a judicial officer who possesses a law degree can be of the greatest value.... Indeed, it can be claimed that a planned and systematic training such as is contemplated by us for the judicial officer selected for the Indian Judicial Service may be more effective than the uncertain and spasmodic training which may be received during the course of a few years practice at the Bar. These and the other considerations referred to earlier have led us to the conclusion that in the interests of the efficiency of the subordinate judiciary, it is necessary that an All India Service called the Indian Judicial Service should be established. This will need action being taken in the manner provided by Article 312 of the Constitution."

The Law Commission has reiterated this view in subsequent reports. It took nearly 20 years for the Government to take follow up action on the basis of the recommendation and that led to the amendment of the legislative entries as already referred to.

10. This proposal of the Law Commission and the follow up governmental action led to consultation and dialogue in the Conference of Chief Justices of the High Courts but many of the High Courts were of the view that setting up of an All India Judicial Service would affect the constitutional scheme of control of the High Courts over the subordinate judiciary and in particular Article 235 of the Constitution. Article 233 makes provision for appointment of District Judges and requires that appointment to such posts has to be made by the Governor of the State in consultation with the appropriate High Court. Article 234 provides for recruitment of persons other than District Judges to judicial service by prescribing that appointments shall be made by the Governor of the State in accordance with the Rules made by him in that behalf after consulting the State Public Service Commission and the High Court exercising the jurisdiction in relation to such State. The post of District Judge has ordinarily been equated with the senior scale status in the All India Services. It was perhaps not contemplated by the Law Commission that on appointment members of the proposed All India Judicial Service were to hold the post of District Judge. Like all other All India Services the initial recruitment could be to a lower rank equal to civil judge and after serving in such post for a reasonable time appointment to the post of District Judge could be made. Since the Law Commission itself was of the view that a percentage should be filled up by direct recruitment from the Bar, the scheme envisaged by the Law Commission would not require amendment of Article 233. It is to be examined whether any alterations in Article 234 would be necessary or recruitment to All India Service could be made by appropriate amendment of the contemplated under that Article.

11. Control over the subordinate courts under the constitutional mechanism is vested in the High Court. Under Article 235, the provision is that the control over District Courts and courts subordinate thereto vests in the High Courts. The main objection against implementation of the recommendation of the Law Commission relating to the setting up of the All India Judicial Service was founded upon the basis that control contemplated under Article 235 of the Constitution would be affected if an All India Judicial Service on the pattern of All India Services Act, 1951, is created. We are of the view that the Law Commission's recommendation should not have been dropped lightly. There is considerable force and merit in the view expressed by the Law Commission. An All India Judicial Service essentially for manning the higher services in the subordinate judiciary is very much necessary. The reasons advanced by the Law Commission for recommending the setting up of an All India Judicial Service appeal to us.

12. Since the setting up of such a service might require amendment of the relevant Articles of the Constitution and might even require alteration of the Service Rules operating in the different States and Union Territories, we do not intend to give any particular direction on this score particularly when the point was not seriously pressed but we would commend to the Union of India to undertake appropriate exercise quickly so that the feasibility of implementation of the recommendations of the Law Commission may be examined expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done.

II

13. The Law Commission in the 14th Report also referred to the various designations provided for judicial officers working in the different States and Union Territories. It observed:

> "In view of the more or less uniform functions performed by the judicial officers so variously designated, it would, we think, be advisable to aim at a uniformity of designation. There is, however, a fundamental difference in the general scheme of distribution of judicial business between the lower grade of officers (munsifs) on the one hand, and the higher grade of officers (subordinate judges) on the other. The first has limited pecuniary jurisdiction while the second, generally speaking, has unlimited pecuniary jurisdiction. We would, therefore, suggest that the State Judicial Service — Class II should consist of civil judges who should be designated as civil judges of the senior and junior divisions. Officers corresponding to munsifs would be designated as civil judges (junior division) and those corresponding to subordinate judges would be designated as civil judges (senior division)".

14. If reference is made to Article 236 of the Constitution, it would be noticed that the expression "District Judge" has been defined to include Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Causes Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge. This definition in Article 236 covers the higher section of the State Judicial Service both in the civil and criminal sides. The definition is only inclusive and in implementing the recommendations of the Law Commission to simplify the designations by saying that the hierarchy of subordinate judicial officers would be District Judge or Additional District Judge, below him Civil Judge (Senior Division) and below him Civil Judge (Junior Division) does not go against the constitutional scheme nor does it require any amendment of the Constitution. If there be any laws operating in the States, perhaps the same may have to be appropriately modified or altered if the uniformity recommended by the Law Commission has to work out.

15. We are inclined to adopt the view of the Law Commission. On the civil side, the State Judicial Service, therefore, should be classified as District or Additional District Judge, Civil Judge (Senior Division) and Civil Judge (Junior Division). On the criminal side, there should be a Sessions Judge or Additional Sessions Judge and below him there should be the Chief Judicial Magistrate and Magistrates provided for in the Code of Criminal Procedure. Appropriate adjustments, if any, may be made of existing posts by indicating their equivalence with any of these categories. The process of bringing about such uniformity would require some time and perhaps some monitoring. We direct that the Ministry of Law and Justice of the Union Government would carry on the monitoring activity and all the States and Union Territories would follow the pattern indicated above by March 31, 1993.

III

16. One of the issues debated at the hearing related to the age of retirement. The Constitution has fixed the age of retirement of Judges in the High Courts and the Supreme Court at 62 and 65 years respectively. There is no constitutional prescription of the age of retirement of the members of the subordinate judiciary and in India that is controlled by the relevant rules obtaining in the different States and Union Territories and it is 58 years at present excepting in the State of Kerala where the age of superannuation is 55 years for all State Government employees including the members of the State Judicial Service.

17. It is the claim of the petitioners that the age of retirement of the officers of the subordinate judiciary should be fixed at 60 years inasmuch as the basic qualification for recruitment to the service requires every officer to have in the minimum a Bachelors Degree in Law which is acquirable after becoming a graduate. Thus, while for normal civil service a graduate is eligible, for recruitment to the judicial service a minimum further period of three years becomes necessary to acquire the basic qualification. In many of the States and the Union Territories, for recruitment to the post in the judicial service a basic period of experience at the Bar is a pre-requisite. Thus, while for the civil service the age of recruitment varies between 25 and 28 years, for judicial service at the basic level most of the States permit entry upto the age of 32. In some of the States where direct recruitment of judicial officers for an in-between stage is permitted, the age of entry is even upto 35 years. Article 233(2) of the Constitution provides:

> "A person not already in service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

18. Keeping this constitutional requirement in view in respect of direct recruitment for District Judge, entrance is permitted upto a later age in many States. Thus at the point of entry into service there is a marked distinction between civil service and the judicial service.

19. Notwithstanding these special features the history of the service would show that no distinction has been maintained in regard to the age of retirement between officers of the civil service and the officers of the judicial service and over the years the same rule has been applied to both. This Court in *Moti Ram Deka, etc. v. The General Manager, North East Frontier Railway, Maligaon, Pandu, etc.* (1964) 5 SCR 683 pointed out:

> "In regard to the age of superannuation, it may be said prima facie that rules of superannuation which are prescribed in respect of public service in all modern States are based on considerations of life expectation, mental capacity of the civil servants having regard to the climatic conditions under which they work, and the nature of the work they do. They are not fixed on any ad hoc basis and do not involve the exercise of any discretion. They apply uniformity to all public servants falling under the category in respect of which they are framed....."

Nature of work is thus one of the considerations relevant to fixing the age of retirement.

20. There is a marked distinction between the nature of work which executive officers and judicial officers are called upon to discharge. The work of the judicial officers is usually sedantry while that of the executive officers involves a lot of physical movement. This is particularly so in the lower cadre of both the services. In view of this feature physical fitness is more important for an executive officer than in case of a judicial officer while in case of judicial officers, there is thus necessarily more of a mental activity than physical. Experience is an indispensable factor and subject to the basic physical fitness with growing age experience grows.

21. As already indicated, retirement age for High Court Judges is 62 years. A sizable portion of the manning in the High Court is done by elevating District Judges and those who are elavated continue upto the age of 62 years like directly elevated members of the

Bar to the High Court.

22. There are certain services in the States where retirement is fixed at the age of 60 years taking into account the special type of work the officers are called upon to perform. For instance, throughout the country teachers of Universities are allowed to serve upto 60 years of age. Employees under some of the corporations also go upto the age 60. Scientific Research Officers are also allowed in many cases the benefit of 60 years age of retirement.

23. Mr. Poti for the State of Kerala raised serious objection to raising the age of retirement of judicial officers to a common level of 58 years by contending that this would load to unrest in the other services of the State and everyone would press for the age of retirement being enhanced to 58. In fact, Kerala had once experimented with the enhanced age for all and has reverted back to the age of 55. The main ground raised by Mr. Poti to resist the proposal of enhancement is that in the State of Kerala the level of literacy is high and unemployment is acute. If the age of retirement is enhanced the scope of the unemployed to get employment would be adversely affected. We are not impressed by the submission of Mr. Poti on this score. The total number of judicial officers of every category in the State may not exceed 3,000 or so. This certainly is not such a big number that might create unemployment problem in the event of the age of superannuation being brought to the All India level of 58 or even enhanced to a higher limit.

24. The Law Commission in its 14th Report dealt with this aspect at page 213 of the report and said:

> "There is yet another reason why the question of the age of retirement of the subordinate judiciary should be treated differently from that in other State Services. As noticed earlier a judicial officer enters service at a comparatively higher age than a recruit to the executive or administrative services. It would, therefore, be proper that the retirement age of a judicial officer should be relatively higher than that of an executive officer, so as to enable him to serve for the full number of years if he retains his fitness and capacity of work till he reaches such higher age.
>
> We, therefore, recommend that the retirement age of the subordinate judiciary in all States should be raised to 58 years. Such a measure will tend to raise the tone and morale of the judicial service as a whole. It will also be consistent with our recommendation to raise the age of retirement of High Court Judges to 65 years."

25. The recommendation that superannuation should be fixed at 58 for judicial officers was made at a time when in public services retirement was prescribed at the age of 55. Considering the enhancement of the longevity of human life and taking all other relevant considerations into account, all the States and all the Union Territories have now enhanced the age of retirement to 58 years excepting, as already pointed out, in the case of the State of Kerala. We are of the view that on the logic which was adopted by the Law Commission and for the reasons which we have indicated the age of retirement of judicial officers should be 60 years. We accordingly direct that appropriate alterations shall be made in the Rules obtaining in the States and Union Territories in respect of judicial service so as to fix the age of retirement at 60 years with effect from December 31, 1992. We have given a long period so that appropriate amendments may be made in the meantime.

IV

26. We shall no deal with the claim for appropriate pay scales and on, as nearly as possible, uniform basis. The 14th Report of the Law Commission dealt with this matter at page 163 of the report and said:

> "It is the matter of scales of pay and remuneration, the judiciary compares unfavourably with the executive branches of the Government. It is true that, generally speaking, the scales of pay of the judicial officers and the corresponding executive officers are identical in many of the States. However, it has to be remembered that the executive officers are, by and large, recruited at a much younger age than the judicial officers. The entrant to the judicial service is required to be a graduate in law and in most of the States it is also necessary that he should have practised for a certain number of years at the Bar. On the other hand, for recruitment to the executive branches of Government service, a degree in arts of science is, generally speaking, sufficient. In the result, a person entering the judicial service does so when he is about 26 or 27 years of age and at a time when his contemporaries who have entered the executive service of the Government have already acquired a certain seniority in the service and have come to draw a higher salary. It will thus be seen that a person joining the judicial service starts with a lower remuneration than what he would have received if he had entered the executive service for a few years that owing to the lesser proportion of superior posts in the judicial service promotions come less quickly to the judicial officers, and a person who has entered the service as a munsif, assuming that he is fit and fully qualified, takes much longer time to become a district judge than would an equally competent deputy collector to reach the position of a collector. Again the judicial officer, having started at a later age, has a shorter span of service than the executive officer and this affects his pension and other retirement benefits."

27. We had called for the prevailing pay scales of the different judicial cadres in the States and the Union Territories and the same have been made available to us. We found that there is wide variance in the pay structure prevailing in the various States and Union Territories and for the same nature of work performed by the judicial officers they are remunerated differently. It is difficult for us on the data now placed to get into the exercise of fixing the appropriate pay scales. We suffer a handicap in the absence of full details necessary for fixing the appropriate pay scales on comparative basis. Again, we are apprehensive that if we enter into the matter and say something a final way, it is possible that in some States benefits which are now available may be taken away or adversely affect some officers. For these reasons, we do not propose to finally examine the propriety of the existing pay scales nor do we direct any pay scales to be fixed.

28. A Pay Commission for the Central Government employees was appointed about 8 years back and on the basis of its Report the revised benefits have been given effect from January 1, 1986. Following that pattern, most of the States have either given the Central scales or appointed their own commissions or committees and given the revised benefits to their officers. It appears that with an interval of 10 years or so such a commission is being appointed and pay scales are being reviewed. Such an exercise is likely to be undertaken with less than three or four years. We are of the view that the claim on this score can be better handled when the pay commissions or committees in the States are set up to review the position. We direct that as and when such commissions or committees are set up in the States and Union Territories hereafter, they separately examine and review the pay structure of judicial officers keeping in view all relevant aspects.

V

29. Under this head, however, we would like to deal with the claim for various allowances. Unlike the administrative officer, the judicial officer is obliged to work for long hours at home. When he reserves a judgment he has usually to prepare the same at his residence. For that purpose, he has to read the records as also the judicial precedents cited by counsel for the adversaries. Even otherwise with a view to keeping himself uptodate about the legal position he has to read judgments of his own High Court, other High Courts and of the Supreme Court. He has also to read legal journals. The judicial officer very often has no provision of an office at his residence. Unless a reasonable allowance is provided for maintaining an office, it becomes very difficult for him to undertake the various aspects of the exercise referred to above. We are of the view that a residential office allowance should be admissible to every judicial officer. The same for the Civil Judge (Junior Division) and the Civil Judge (Senior Division) be fixed at the rate of Rs. 250 per month and for officers of the higher category the monthly allowance should be Rs. 300.

30. Law books, Law reports and legal journals are indispensable to a judicial officer. They are in fact his tools and in case a junior officer has to discharge his duties satisfactorily he has to get acquainted with these. His ability to perform his duty to a considerable extent depends upon his reading habit and devoting a sizeable working time to reading all this literature. Reading habit is indispensable to a judicial officer and possession of a small library of one's own helps generation of the proper reading habit. Law books and Law journals have in particular become very costly these days. One standard Law journal for the decisions of the High Court, another for the decisions of this Court and one or two standard Law journals on the average would cost about Rs. 200 a month.

31. There is no existing system of providing Law books and journals to the officers of the lower judiciary. Many of the judicial officers in the lower ranks have their working places away from the district headquarters where the seat of the district judge is located. There is perhaps at every district headquarters a small library but the number of books is small and more than one copy of many of the books would not be available. Therefore, whether it is at the district headquarter or in areas away therefrom, effective library facility is not available. We are of the view that a uniform pattern of small library should be provided to every judicial officer. We accordingly direct that such a library shall be made available by 30.6.1992 to every judicial officer and the District Judge should have provision made in his budget for the said residential library for every judicial officer under his control. The High Court should monitor this aspect effectively so that without loss of time, a handy library may be at the disposal of every judicial officer.

32. The District Judge is the principal judicial officer of the district. Ordinarily every revenue district has a district judge and his seat is located at the headquarter. In heavy stations, the district judge has a team of additional district judges to assist him. There would also be a number of judicial officers of lower categories working at the headquarters. It is the obligation of the district judge to operate as the captain of the team both under his direct supervision at the headquarters and in respect of the officers located in different areas within his district. Of late, lower or subordinate courts are being established in the outlying and rural interior. It is the obligation of the district judge to inspect the outlying courts, maintain the proper judicial tempo and temper of functioning in his district and be responsible for the efficient running of the system.

33. In many of the States the prevailing practice is that the district judge takes a monthly meeting with the collector and district magistrate and the superintendent of police. He also meets the members of the Bar. Now and then he meets his judicial officers — those at the headquarters as also the others who are in the interior. It is desirable that the district judge devotes some time as frequently as possible and at least once a week to meet the judicial officers beyond the working hours, discusses working problems of his officers and forms his own opinion about how the work is being done. A weekly assessment of such performance generates even temper of judicial activity and upholds the tempo being maintained at the appropriate level. There is not yet any definite system of judicial training in most of the States and Union Territories. A judicial officer with his first posting or until he acquires adequate experience requires guidance. It should ultimately be the obligation of the district judge to provide the same. We are of the view that to the post of district judge a monthly allowance of Rs. 300 by way of sumptuary allowance should be available to enable him to extend small courtesies at such meetings.

The chief judicial magistrate does some of these activities in respect of the magistrates handling criminal work. In our opinion he should be entitled to a sum of Rs. 200 per month by way of sumptuary allowance. We are aware of the fact that under the Conditions of Service Act of High Court Judges, a sumptuary allowance of Rs. 300 is payable to them every month. Now that we have directed that Rs. 300 should be fixed for the district judges, we command that the sumptuary allowance fixed for the High Court Judges may be enhanced suitably. These allowances shall be payable from 1.4.1992. We would like to add that this allowance is intended for utilisation to the full extent for entertaining judicial officers in connection with performance of duty and would not be considered as a perk for being included in the hands of the recipient as his income.

VI

34. Provision of an official residence for every judicial officer should be made mandatory. A judicial officer to work in a manner expected of him has to free himself from under obligations of others, particularly owners of buildings within his jurisdiction who ordinarily may have litigations before him. This is mostly the case in rural areas where out station judicial courts are located. We are aware of cases where a rural court is located in the building belonging to a lawyer or a client. Even the residential accommodation of the judicial officer belongs to people of that category. Such a situation often gives occasion to personal embarrassment to the judicial officer and it has to be avoided.

35. Expenditure on residential accommodation in a family budget is not ordinarily to exceed 15 per cent of the monthly income; otherwise it becomes difficult for the person concerned to make his two ends meet. A judicial officer who is not provided residential accommodation is obliged to go in for rented accommodation. In view of the prevailing rate of rent, the smallest accommodation that can be taken may often cost 75 per cent to 100 per cent of the monthly salary, a situation which cannot be countenanced by any logic. It is absolutely necessary that appropriate conditions should be provided for the judicial officer and he should have reasonable mental peace in order that he may perform his duties satisfactorily. Rendering justice is a difficult job. It is actually a divine act. Unless the judicial officer has a reasonably worry free mental condition, it would be difficult to expect unsoiled justice from his hands.

36. Very often building projects are undertaken for providing residential accommodation to public officers but the requirement of the judicial officer is not taken into account for one reason or the other. Control of the State purse is in the hands of the executive. As appropriate share of construction expenses is not being provided towards accommodation of judicial officers, they do not have any quota in the building projects. As a result of this over the years at several places throughout the country residential accommodation for the judicial officers has turned out to be scanty. Many judicial officers dread posting in Metropolitan towns as residential accommodation is not available and the rental would be exorbitant in respect of private accommodation. The cost of living also becomes heavy.

37. We take judicial notice of the fact that the Planning Commission of the Central Government is considering acceptance of the subordinate judiciary as a plan subject. Providing adequate residential accommodation should be considered as a priority. Until adequate governmental accommodation is available, it should be the obligation of the State at the instance of the High Court to provide requisitioned accommodation for every judicial officer according to his entitlement and recovery of not more than twelve and a half per cent of salary of the officer towards rent should be made and the balance should be met by the State Exchequer. We would emphasise the need of provision of a separate and exclusive office room as an indispensable component of every such official residence and the accommodation should take into account this feature. As a long term measure, Government accommodation should be constructed to meet the need of the judicial officers at their respective stations. This should be a matter for the Planning Commission to review and the State Governments to cooperate and undertake construction activity. The Governments of the States and the Union Territories would take some time to implement this part of the direction. In case for some reason, the Planning Commission does not come forward to take up the matter before January, 1992, the Chief Justice of every High Court should set up a committee with him as Chairman where two senior Judges of the Court and the Secretaries of Finance, Law and Works should be members and annual planning of construction of residence should be made. We accordingly fix the outer limit of December 31, 1992 when this part of the direction would become fully operative.

VII

38. We shall now deal with the claim for transport. In most of the States the District Judge has been provided a motor car and in some of the States the Chief Judicial Magistrate is also provided with such transport, be it a car or a jeep. There are still some States like Rajasthan, Haryana and Madhya Pradesh where provision of a car for every district judge has not yet been made. We direct the every district judge should be provided with a car by March 31, 1992, and it shall be the obligation of the other States where such facility has not been provided to ensure the same within the time limit.

39. The Chief Judicial Magistrate is a touring officer apart from doing trial work as a magistrate. Mandate of the Code of Criminal Procedure requires him to undertake some touring. The quality of criminal justice administration would very much depend upon the mobility of the Chief Judicial Magistrate. We, therefore, direct that in such States and Union Territories where provision of independent transport for the Chief Judicial Magistrate has not been made, the same should be done by September 30, 1992. We are further of the view that in stations with more than four judicial officers a common transport should be provided for the purpose of taking them from the residence to the court and back and meeting their other official purposes and such vehicle should be placed under the control of the senior most officer in the pool. The arrangement should be that for every five officers, there should be a vehicle. Provision for this aspect should be made by March 31, 1993. This direction has become necessary as judicial officers should not be forced to travel along with litigants and lawyers. In many sensitive cases, records are carried by them. Often judgments to be pronounced are also taken by them. In some disturbed areas, instances of harassment to judicial officers taking advantage of their using common transport have come to light. We direct that every State and Union Territory would file a compliance report in the Registry of this Court in respect of these three aspects within one month from the expiry of the outer limit indicated for each of them.

40. There are several outlying courts where the number of officers would not be more than five. We do not intend to provide any independent transport for them but such officers who ask for loan for purchase of a two wheeler automobile should immediately be provided the same. Appropriate funds should be made available for such purpose. A pool car should have 60 litres of petrol per month and a judicial officer owning a scooter would be entitled to an allowance of Rs. 200 per month.

41. We are alive to the fact that our directions involve a burden on the State Exchequer. Perhaps some justification as to why these expenses should not be grudged must now be indicated. Professor Pannick in the book entitled "Judges" has observed:

> "Judges do not have an easy job. they repeatedly do what the rest of us seek to avoid; make decisions."

He further added:

> "Judges are mere mortals but they are asked to perform a function that is utterly divine."

Professor Harold Laski once wrote to Justice Oliver Holmes that 'he wished that people could be persuaded to realise that judges are human beings; it would be a real help to jurisprudence.'

42. The Trial Judge is the kingpin in the hierarchical system of administration of Justice. He directly comes in contact with the litigant during the proceedings in Court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personality, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the court's functioning successful.

43. Krishna Iyer, J. described the scene very graphically thus:

> "Law is a means to an end and justice is that end. But in actuality, Law and Justice are distant neighbours; sometimes even strange hostiles. If law shoots down justice, the people shoot down law and lawlessness paralyses development, disrupts order and retards progress. This is the current scene."

It calls for serious introspection.

44. The Law Commission in the 14th Report said:

> "If the public is to give profound respect to the judges the judges should by their conduct try and observe it; not by word or deed should they give cause for the people that they do not deserve the dedestal on which we expect the public to place them. It appears to us that not only for the performance of his duties but outside the court as well a Judge has to maintain an aloofness amounting almost to self imposed isolation."

The Commission quoted Sir Winston Churchill who had said:

> "A form of life and conduct far more severe and restricted than that of ordinary people is required from judges and though unwritten has been most strictly observed. They are at once privileged and restricted; they have to present a continuous aspect of dignity and conduct."

45. These prescriptions for a Judicial Officer, therefore, result in a restricted life. Austerity is a quality to be practised by every Judge — personally as also in his public functioning. This necessarily gives rise to a situation where the Judge must have patience, perseverance and painstaking habits. In order that a Judge may be able to put in these aspects into his public functioning it is absolutely necessary that the Judge enjoys freedom from personal worries. A reasonable salary, appropriate allowance and manageable living conditions are, therefore, required to be provided.

46. For quite a few years the conditions of service of Judges of the superior Courts and those of the public officers in the Executive side had been put at par excepting such provisions as were contained in the Government of India Act, 1935 or under the Constitution. For the first time it was accepted that separate Conditions of Service should be provided and conditions of Service Acts for the High Court and Supreme Court Judges were separately enacted in 1954. Those statutes and the Schedules therein even now contain provisions to the effect that matters for which provisions have not been made by the statutes are to continue to be the same as provided for the officers in the Executive wing as named. In a democratic polity the role of the judiciary is indispensable. The efficient functioning of the Rule of Law under the aegis of which our democratic society can thrive requires an efficient, strong and enlightened judiciary. And to have it that way the Nation has to pay the price. There was a time when a Judge enjoyed a high status in society. Very often a successful Member of the Bar earning a high income favourably responded to the invitation of the Chief Justice to accept judgeship. That no more is the position. The sense of professional obligation has died down for reasons more than one; but perhaps the most eloquent one is loss of social status of the Judge. The effect of this position in respect of the higher judiciary has its impact on the subordinate judiciary too. Half a century back a Judicial Officer even of the lowest category enjoyed great social status. He was looked upon with a sense of reverence. He led a life in tune with the recommendations of the Law Commission in its 14th Report. He had the training of limiting his wants and managed to live a contented life by making his two ends meet with limited resources of small salary. That philosophy of life has vanished or is fast vanishing. A great social change has over taken today's society. Life has become competitive; demands of life have increased; and aptitudes have changed. Therefore, today a judicial officer always looks at life in a comparative way with administrative officers of his age. Professional income at the Bar has tremendously swelled up. Very often counsel's fee per day equals to the salary of a judicial officer for a full month or even a longer period. This great disparity affects peace and equilibrium in the judicial operation.

47. As early as 1958 the Law Commission said:

> "As we shall point out, later the problem has since grown in dimension because there is unmistakable testimony that the standards of the judicial officers recruited from the Bar and other sources have during recent years fallen in a substantial degree for various reasons. This has been

> almost the unique view expressed by the witnesses before us. It is thus obvious that no scheme of review of judicial administration will be effective or worthwhile unless the basic problem of providing a trained and capable judicial personnel is satisfactorily solved."

48. This was adequate and timely notice to the Government and its people. Instead of attending to the problem then, 33 long years have been allowed to roll by and what was then said as growing dimension has grown to devalue the system. Its resurrection has, therefore, become more costly.

49. It is perhaps useful to recall here the prophetic warning sounded by Rober Ingersoll:

> "A government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities, and all the nations that have passed away - all are a warning that no nation founded upon injustice can stand. From the sand enshrouded Egypt, from the marble wilderness of Athens, and from every fallen or crumbling stone of the once mighty Rome, comes a wail as it were, the cry that no nation founded on injustice can permanelty stand."

50. Society, therefore, must understand the problem. Solution to the problem would depend upon realisation of the fact that the more capable people at the Bar are not willing to accept offers of judicial appointments. The plea that the other wings in the States would demand improvement in their scales of pay is not a relevant feature at all when the problem is viewed from this angle. We hope and trust that society would generate the appropriate understanding of the matter and no Government would come forward to take the stand that if the pay scales and perks of the judicial Officers are improved similar demands would come from other wings of Government.

51. Even in the existing system there are some posts which carry special pay that is on account of the fact that there is more of basic equipment demanded and the nature of work is different and judicial service satisfies both and, therefore, Government can always prescribe a higher pay scale for Judicial Officers.

52. In 1986 there was a Conference of the Chief Justices of the High Courts, Chief Ministers and the Law Ministers of the States called by the then learned Chief Justice of India and the Ministry of Law and Justice. The then Chief Justice of India and the Law Minister of the Central Government tried their best to make the State Governments and the Union Territories understand the basic problem. While some improvements came as a result of the Conference for the higher judiciary, the claim of the Subordinate judiciary remained unattended.

53. We would like to point out that dispensation of justice is an inevitable feature in any civilized society. Maintenance of law and order require the presence of an efficient system of administration of criminal justice. Under the Civil Code, Court fee is realised under the Court Fee Act. For some time demand to abolish it has been made but the States have abandoned the idea on account of the demand by the States of compensation from the Centre in case of abolition of Court fee. Court fee is not a tax and is a fee as has been held by a Constitution Bench of this Court in *Secretary, Government of Madras. Home Department and another v. Zenith Lamps and Electrical Ltd.,* AIR 1973 SC 724. In Paragraph 29 of this judgment Sikri, CJ speaking for this Court pointed out:

> "It seems to us that the separate mention of 'fees taken in court' in the Entries referred to above has no other significance than that they logically come under Entries dealing with administration

> of Justice and Courts. The draftsman has followed the scheme designed in the Court Fees Act, 1870 of dealing with fees taken in court at one place. If it was the intention to distinguish them from fees in List II Entry 66, surely some indication would have been given by the language employed. If these words had not been separately mentioned in List I, Entry 77 and List II.........
>
> It seems plain that 'fees taken in court' are not taxes, for if it were so, the word 'taxes' would have been used for some other indication given. It seems to us that this conclusion is strengthened by two considerations. First, taxes that can be levied by the Union are mentioned in List I from Entry 82; in List II taxes that can be imposed start from Entry 45. Secondly, the very use of the words 'not including fees taken in any court' in Entry 96 List I, and Entry 66 List II, shows that they would otherwise have fallen within these Entries. It follows that 'fees taken in court' cannot be equated to "Taxes". If this is so, is there any essential difference between fees taken in court and other fees? We are unable to appreciate why the word 'Fees, bears a different meaning in Entry 77, List I and Entry 96 List I or Entry 3 List II and Entry 66 List II. All these relevant cases on the nature of 'fees' were reviewed in *Indian Mica and Micanite Industries Ltd. V. The State of Bihar,* AIR 1971 SC 1182 at page 1186, by Hegde J. and he observed:
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> "From the above discussion, it is clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable correlationship with the services rendered by the Government. In other words, the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact correlationship. The correlationship expected is one of a general character and not as of arithmetical exactitude."

54. It is not our intention to raise a dispute on this aspect. We adverted to these authorities and the views of this Court to bring support for the view that what is collected as Court fee at least be spent on the administration of Justice instead of being utilised as a source of general revenue of the States. Undoubtedly the income from Court fees is more than the expenditure on the administration of Justice. This is conspicuously noticeable from the figures available in the publication in the Ministry of Law and Justice.

55. What we have said above should be adequate justification for making provision with a view to making judicial functioning viable.

56. We would like to recall a part of the funeral oration on Mr. Justice Story delivered some 150 years back by Daniel Webster:-

> "Justice, Sir, is the greatest interest of man on earth. It is the ligament which holds civilised beings and civilised nations together. Wherever her temple stands, and so long as it is duly honoured, there is a foundation for social security, general happiness and the improvement and progress of our race. And whoever labours on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablateures, or contributes to raise its august dome still higher in the skies, connects himself in name and frame and character with that which is and must be as durable as the frame of human society."

To those who control the purse what Webster said should provide the direction.

VIII

57. One of the claims advanced before us was for provision of in-service training for judicial officers. This we consider as a must. In fact, the law Commission in one of its recent report has advised that in-service institutes should be immediately set up. About a year back the Union Government had proposed the setting up of an All India In-service Institute but nothing more has been done about it. In some of the States like Uttar Pradesh and Andhra Pradesh, such in-service institutes are functioning. We are of the view that in-service institutes are indispensable for the upkeep of the efficiency of judicial service. We direct that an All India Institute of In-service Training for higher officers of the judiciary including the district judges and a State level institute for training of the other members of the subordinate judiciary within each of the States and Union Territories or one common institute for more than one State or Union Territory should be set up within one year from now and at any rate not later than December 31, 1992. This has to be organised by respective High Courts.

58. Before we part, we must indicate with all the emphasis at our command that the system has to be saved as for a civilised society an enlightened independent judiciary is totally indispensable. The High Courts must take greater interest in the proper functioning of the subordinate judiciary. Inspection should not be a matter of casual attention. The Constitution has vested the control of the subordinate judiciary under Article 235 in the High Court as a whole and not its Chief Justice alone. Every Judge should, therefore, take adequate interest in the institution which is placed under the control of the High Court. We may point out that that is what Lord Atkins said in *Deoi Prasad Sharma and others v. The King Emperior,* 70 IA 216. And it has been approved by a Constitution Bench in *Baradakanta Misra v. The Registrar of Orissa High Court and Another,* (1974) 2 SCR 282. It should be remembered by all the Judges of the High Court, viz., that the administrative control of the subordinate courts of the State vests not in the Chief Justice alone but in the Court over which the Chief Justice presides.

59. Burger, CJ of the American Supreme Court once said:

> "A sense of confidence in the Courts is essential to maintain the fabric of ordered liberty for a free people and it is for the Subordinate Judiciary by its action and the High Court by its appropriate control to ensure it."
>
> It is useful to remember what President Lincoln often said:
>
> "If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem."

60. It is time we mention about society's expectation from the Judicial Officers. A judge ought to be wise enough to know that he is fallible and, therefore, even ready to learn and be courageous enough to acknowledge his errors.

61. The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

62. We would like to part with the matter by recalling a statement of Edmund Burke:

> "All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and that they are to account for their

conduct in that trust to the one great Master, Author and Founder of Society."

63. We would now briefly indicate the directions we have given in the judgment:

(i) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.

(ii) Steps should be taken to bring about uniformity in designation of officers both in civil and the criminal side by 31.3.1993.

(iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by 31.12.1992.

(iv) As and when the Pay Commissions/ Committes are set up in the States and Union Territories; the question of appropriate pay scales of judicial officers be specifically referred and considered.

(v) A working library at the residence of every judicial officer has to be provided by 30.6.1992. Provision for sumptuary allowance as stated has to be made.

(vi) Residential accommodation to every judicial officer has to be provided and until State accommodation is available, Government should provide requisitioned accommodation for them in the manner indicated by 31.12.1992. In providing residential accommodation, for them in the manner indicated by 31.12.1992. In providing residential accommodation, availability of an office room should be kept in view.

(vii) Every District Judge and Chief Judicial Magistrate should have a State vehicle, Judicial Officers in sets of 5 should have a pool vehicle and others would be entitled to suitable loans to acquire two wheeler automobiles within different time limits as specified.

(viii) In-service Institute should be set up within one year at the Central and State or Union Territory level.

SCALE (PIL) 1981-97 1284

M.C. MEHTA *Petitioners*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: S.C. SEN AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — COMPENSATION — RELOCATION OF INDUSTRIES IN DELHI — Death of a worker under peculiar circumstances — Court fixed the ex- gratia amount to be paid by the Company at Rs. 5,50,000/-. — This amount must be paid to the widow within a period of one week from today. The Company will invest this amount of Rs. 5,50,000/- in a long term fixed deposit of not less than five years, in a nationalised bank in the name of the widow. The Bank will hold the Fixed Deposit till further orders of the Court. The interest amount will be paid to the widow for the benefit of the widow as well as her children.

I.A. No. 122 in I.A. 22:

1. On behalf of Company, Mr. Gopal Subramaniam has stated that apart from the merits of the case of the workmen, in this particular case relating to the deceased Sarvesh Chander, the Company has already paid an amount of Rs. 30,500/- to the widow of Sarvesh Chander, which was his dues. The Company is also willing to make an ex-gratia payment having regard to the circumstances

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Order dated September 2, 1997 in I.A. No. 122 in I.A. No. 22 in W.P. (C) No. 4677 of 1985. [1997(6) SCALE 56] under which he died. The Company further undertakes to absorb the eldest son of the family in its employment. The Company will also pay for the expenses of the three other children of Sarvesh Chander for their education. We fix the ex-gratia amount to be paid by the Company at Rs. 5,50,000/-. This amount must be paid to the widow within a period of one week from today. The Company will invest this amount of Rs. 5,50,000/- in a long term fixed deposit of not less than five years, in a nationalised bank in the name of the widow. The Bank will hold the Fixed Deposit till further orders of the Court. The interest amount will be paid to the widow for the benefit of the widow as well as her children. On maturity of the Fixed Deposit, further instructions should be taken from the Court. The Managing Director need not be personally present in Court on 9th September, 1997.

2. I.A. is adjourned to 9th September, 1997.

I.A. .... In I.A. 22:

3. I.A. be registered.

4. I.A. is adjourned to 30th September, 1997. Affidavit be filed in the mean time.

SCALE (PIL) 1981-97 1285

RESEARCH FOUNDN. FOR SCIENCE *Petitioner*

VS

U.O.I. & ANR. *Respondents*

CORAM: J.S. VERMA, CJI. AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — HAZARDOUS WASTES — Update of order reported in 1997(5) SCALE 495.

1. The copies of the affidavits filed by the concerned authorities be furnished to the learned Additional Solicitor General as well as to the learned counsel for the petitioner if that has not already been done. Full compliance of all the earlier directions including the present be made within two weeks. Learned Additional Solicitor General submitted that it would be possible for him to suggest the names of persons who may be appropriate for being nominated to the Committee as indicated in the previous order dated 4.8.1997 and the terms of reference within two weeks.

2. List on 15th September, 1997.

Order dated August 19, 1997 in W.P. (C) No. 657/95 [1997(6) SCALE (SP) 4]

SCALE (PIL) 1981-97 1285

DR. GEORGE MATHEW *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI., B.N. KIRPAL AND S.P. KURDUKAR, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — GYAN PRAKASH COMMITTEE'S REPORT — Court records the additional affidavit filed on behalf of the Government of India and the fact that a Committee of two retired Secretaries of Government

Order dated August 22, 1997 in W.P. (C) No. 622/95. [1997(6) SCALE (SP) 5]

of India has been constituted to enquire into the allegations made in this writ petition and that the Committee was expected to submit its report by the middle of October, 1997 — Court further directs that the matter be listed on November 7, 1997.

1. Learned Attorney General has referred to the Government of India's order dated 20th August, 1977 at pages 158 and 159 of the paper book which has been produced along with the additional affidavit of Sh. Surendra Kumar, Joint Secretary, Government of India to apprise us of the fact that a Committee of two retired Secretaries of Government of India has been constituted to enquire into the allegations made in this writ petition and that the Committee is expected to submit its report by the middle of October, 1997. In view of this fact, we consider it appropriate to adjourn the hearing of this matter to await the report of the Inquiry Committee. We also permit the petitioner to render assistance to the Inquiry Committee in the performance of its task in the manner permitted by the Inquiry Committee so that the Inquiry Committee is able to complete its task expeditiously.

2. The matter be listed on 7th November, 1997.

SCALE (PIL) 1981-97 1286

CENTRE FOR ENVIRONMENTAL LAW, WWF-I *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: S.C. AGRAWAL AND G.T. NANAVATI, JJ.

PUBLIC INTEREST LITIGATION —ENVIRONMENT — WILD LIFE PROTECTION ACT, 1972 — SECTION 21 — Constitution of Wild Life Advisory Boards, appointment of Wild Life Wardens and proclamation in respect of sanctuaries/national parks in different states — Court issues certain directions.

1. In the order July 7, 1997 it was observed that some of the States had not filed affidavits in pursuance of the order dated March 25, 1997. By the said order four weeks time was granted to the concerned States to file the affidavits and it was also indicated that in the event of failure to do so, contempt proceedings will have to be initiated against them. So far affidavits have not been filed on behalf of the States of Assam, Andhra Pradesh, Bihar, Goa, Jammu and Kashmir, Kerala, Manipur and Nagaland and the Union Territory of Andaman and Nicobar Islands. The learned counsel appearing for the State of Assam states that he will be filing the affidavit during the course of the day. He is permitted to do so. Since affidavits have not been filed on behalf of the other States referred to above, it is directed that contempt notices be issued to the respective Chief Secretaries of the concerned States/Union Territory. Their personal presence is not necessary for the present.

2. A perusal of the affidavits that have been filed on behalf of the States and the Union Territories shows that in some of the States Wild Life Advisory Boards have either not been constituted or were constituted earlier and after the expiry of the term of the Board, that was constituted, there has been

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Order dated August 22, 1997 in I.A. No. 2 in W.P. (C) No. 337/95. [1997(6) SCALE (SP) 8] no reconstitution of the Board. In the States in which Wild Life Advisory Board has not been constituted or where the Board had earlier been constituted but the term has expired and the board has not been reconstituted, necessary steps should be taken to constitute/reconstitute the Wild Life Advisory Board within a period of two months.

3. As regards the appointment of Wild Life Wardens, we find that in some States Wild Life Wardens have not been appointed at all while in some States Wild Life Wardens have been appointed for some areas but have not been appointed for other areas. It is directed that the concerned State/Union Territory shall take the necessary steps to appoint Wild Life Wardens for all the areas with in a period of two months.

4. Even though notifications in respect of sanctuaries/national parks have been issued under section 18/35 in all States/Union Territories, further proceedings as required under the Act i.e. issue of proclamation under section 21 and other steps as contemplated by the Act have not been taken. The concerned State Governments/Union Territories are directed to issue the proclamation under section 21 in respect of the sanctuaries/national parks within two months and complete the process of determination of rights and acquisition of land or rights as contemplated by the Act within a period of one year.

5. As regards denotification of any area which is included in a sanctuary/national park, it is directed that before placing the proposal before the Legislative Assembly the concerned State Governments shall refer the proposal to the Indian Board for Wild Life for its opinion and the proposal shall be placed for consideration before the Legislative Assembly alongwith the opinion of the Indian Board for Wild Life.

6. In order to effectively control the growing increase of poaching in the sanctuaries/national parks the Central Government as well as the Governments of the States/Union Territories are directed to ensure that the forest guards in the sanctuaries/national parks are provided modern arms, communication facilities, viz. wireless sets and other necessary equipments in that regard. Necessary steps for that purpose shall be taken within six months.

7. List on 17.10.1997 for final disposal.

SCALE (PIL) 1981-97 1287

VINEET NARAIN & ORS. *Petitioners*

VS

UNION OF INDIA & ANR. *Respondents*

CORAM: J.S. VERMA, CJI., S.P. BHARUCHA AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — HAWALA CASE — Court issues further directions

1. Mr. Anil. B. Divan, learned *amicus curiae* is partly heard.

2. Mr. Divan placed before us a copy of the Vohra Committee Report dated 5th October, 1993 and referred to it in his submissions. The same be kept in the record. Mr. Divan has also submitted some broad points which would require consideration in the present case. Reference was also made at the hearing to the decision of this Court in *Dinesh Trivedi, M.P.*

Order dated August 21, 1997 in W.P. (Crl.) Nos. 340-43 of 1993. [1997(6) SCALE (SP) 6] *and Others vs. Union of India and Others*, 1997 (4) SCC 306. We consider it appropriate that the Home Secretary of the Central Government or some other senior officer fully conversant with this matter should state on affidavit the follow-up action, if any, taken so far on the Vohra Committee Report read in conjunction with *Dinesh Trivedi* (supra). The affidavit be filed by 8th September, 1997.

3. List on 11th September, 1997.

SCALE (PIL) 1981-97 1288

S. JAGANNATH *Petitioners*

VS

U.O.I. & ORS. (ORISSA SHRIMP FARMERS ASSOCN) *Respondents*

CORAM: A.S. ANAND, S.C. SEN AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — AQUA FARMS — Review petitions — Update of order reported in 1997(5) SCALE 406.

1. Heard in part.

2. Let the case be fixed on a non-miscellaneous day at No.1 in the cause-list. Registry to give the date.

3. Till then demolition of the aqua farms will not take place, but this order shall not imply any permission to any of the aqua-farms, which were required to be demolished, to carry on the aqua-culture activities in those farms by putting any fresh seeds hereafter.

Order dated August 19, 1997 in R.P. (C) No. 872/97 in W.P. (C) No. 561/94. with R.P. (C). No. 1000/97, R.P. (C) No. 1013/97, R.P. (C) No. 1066/97, R.P. (C) No. 415/97, R.P. (C) No. 542/97, R.P. (C) No. 573/97, R.P. (C) No. 636/97, R.P. (C) No. 777/97, R.P. (C) No. 846/97, R.P. (C) No. 893/97, R.P. (C) No. 945/97. [1997(6) SCALE (SP) 7]

SCALE (PIL) 1981-97 1288

ALMITRA H. PATEL & ANR. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA AND S.P. KURDUKAR, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — URBAN WASTE MANAGEMENT AND DISPOSAL — Court issues certain directions.

1. We find that the concerned authorities have not responded with the promptitude expected of them in a matter of this kind with the result that many of them have not filed even their initial response. We are afraid this is indicative of the continuing casual approach of the authorities to the tackling of the serious problem indicated in the writ petition. A general prayer on behalf of the respondents for further time has been made. In order to enable these authorities to file a meaningful counter affidavit containing the relevant facts, we grant the respondents four weeks' further time for the purpose.

2. Learned counsel for the petitioners has indicated certain areas with reference to

Order dated March 3, 1997 in W.P. (C) No. 888/96. [1997(6) SCALE (SP) 10] which a definite response of the respondents is necessary. The particulars of such areas indicated by the learned counsel for the petitioners are required to be taken note of by each respondent and the counter-affidavit must contain the response thereto with sufficient details in support of the reply. These points are as under:

1. Number of waste processing sites, with area, location, details of ownership.
2. Details of size and population serviced by each site.
3. Whether the present sites are adequate and details of plans/policy of acquiring land for future sites.
4. Details of the prevailing disposal methods and whether the present practices include recycling, composting, bio-gas generation, pelletising or sale of garbage.
5. Proximity of waste management sites to human habitation or traffic and whether disposal sites are enclosed by boundary walls or fences.
6. Measures adopted in respect of limiting adverse effects on human health.

3. The Union of India is granted two weeks thereafter, i.e., six weeks in all to file their response.

4. List on 21.4.1997.

SCALE (PIL) 1981-97 1289

ALMITRA H. PATEL & ANR. *Petitioners*

VS

U.O.I. & ANR. *Respondents*

CORAM: J.S. VERMA, CJI. AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — URBAN WASTE MANAGEMENT AND DISPOSAL — Court issues certain directions.

1. Responses have been filed by some States and some Municipalities but not by all of them. The responses filed also do not advert to the steps taken for compliance with the report of the High Power Committee set up by the Planning Commission in 1995 on 'Urban Solid Waste Management in India' and the report of the Central Pollution Control Board (CPCB) on 'Management of Municipal Wastes (Sewage and Solid Waste)' (1994). It is necessary at this stage to know the steps taken in each State to implement these reports which deal with the problem and also make certain recommendations to solve the problem. We do not find the requisite interest and response from the State Governments and the other concerned authorities in spite of service of notice of this writ petition, when such action was required to be taken by the Municipalities and the State Governments in the ordinary course in discharge of their duties in this behalf. In these circumstances, in order to emphasise on the concerned authorities the need for prompt performance of their duty at least now, we direct the Chief Secretary of each State to make a statement on affidavit of the steps taken in the State to implement the reports and the recommendations made therein of the Planning Commission and the CPCB. Affidavits by the Chief Secretaries of each State be filed within six weeks. Rejoinder, if any, be filed within three weeks thereafter.

Order dated April 21, 1997 in W.P. (C) No. 888/96 [1997(6) SCALE (SP) 11]

2. Learned Additional Solicitor General submits that the Central Government would also take the necessary steps to ensure due compliance by all the State Governments and the Municipalities.

3. List on 28th July, 1997.

SCALE (PIL) 1981-97 1290

ALMITRA H. PATEL & ANR. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI. AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — URBAN WASTE MANAGEMENT AND DISPOSAL — Court issues certain directions.

1. The respondents who have failed to answer and file their replies should file their replies in a time bound manner.

2. The respondents are directed to consider low cost waste sanitization option. That may be required to file an affidavit in reply within four weeks, stating whether this Bio-treatment method can be implemented. In the event that the answering respondents find that the proposed Bio-treatment method is unfeasible or other scientific waste disposal method is more appropriate then the answering respondent is directed to set out reason and conclusion for the same.

3. The respondents are directed to include in their affidavits a time bound scheme for implementation of scientific and hygienic methods of waste disposal.

4. The respondents are directed to seek expert advice in respect of mosquito, flies and other Vectors Control.

5. The respondents are directed immediately to take DDT and BHG and similar dangerous insecticides on garbage dumps and dump sites.

6. The Central Pollution Control Board and all State Pollution Control Boards should ensure compliance of the provisions of the Water (Prevention and Control of Pollution Act, 1974, by everyone including the local bodies.

7. The respondents are also required to file affidavit of compliance of these directions within eight weeks.

8. List on 22nd September, 1997.

Order dated July 28, 1997 in W.P. (C) No. 888 of 1996. [1997(6) SCALE (SP) 12]

SCALE (PIL) 1981-97 1290

KHATRI AND OTHERS (I) *Petitioners*

VS

STATE OF BIHAR AND OTHERS *Respondents*

CORAM: P.N. BHAGWATI AND E.S. VENKATARAMIAH, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — BIHAR BLINDINGS —

Order dated December 3, 1980 in Crl. W.P. No. 5670 etc. of 1980.

Blinding of under trials while in police custody — State ordered to ensure treatment in Delhi of those blinded undertrials bailed out and not covered by the Court's order dated December 1, 1980 — State directed to inform Court regarding providing of legal representation to such undertrials — Concerned District Judge and remand Magistrate directed to file information — State directed to pay cash to prisoners undergoing treatment in Delhi.

Relied: Hussainara Khatoon (IV) vs Home Secy., State of Bihar, (1980) 1 SCC 98; Sunil Batra (II) vs Delhi Administration, (1980) 3 SCC (Cri) 777.

Bhagwati, J.— These seventeen petitioners in the two writ petitions who are under trial prisoners in the Central Jail, Bhagalpur complain that they have been deprived of their eyesight by the police while they were in police custody after their arrest in connection with certain criminal cases. These cases represent two more instances of the cruel and barbaric manner in which the administrators of law deal with persons arrested by them. The police are supposed to enforce the law and not to break it, but here it seems that they have behaved in a most lawless manner and denied not only the constitutional safeguards but also perpetrated what may aptly be described as a crime against the very essence of humanity. It is barbaric act for which there is no parallel in civilized society and deserves the strongest condemnation from all sections of the community. It is difficult to believe how any person, much less an enforcer of law, can be so ruthless and inhuman as to deprive fellow human beings of their eyesight. It shows to what depths of depravity the administrators of law can sink in the State of Bihar. We are glad to know that public conscience has been aroused and action is being taken against the perpetrators who are responsible for this stark human tragedy. It is an act of barbarism which requires to be investigated throughly and we would have appointed a team of lawyers to go to Bhagalpur Central Jail and investigate the atrocities committed by the police on persons arrested and detained in police custody as also by the jail authorities on the under trial prisoners so that a thorough probe could be conducted into these matters by lawyers who, by reason of their legal training and social commitment would be able to carry out a searching and effective investigation, but since an order has already been made by a Division Bench of this Court on December 1, 1980, in Writ Petition 5352 of 1980, (1981) 1 SCC 622 directing the Registrar of this Court and one other officer to visit Bhagalpur Central Jail and obtain first-hand information from the petitioners in that case and other prisoners similarly situated which would include the present petitioners as well, as regards the impairment or blinding of their eyes, we do not think it necessary or expedient to appoint another investigating team. We would wait for the report of the Registrar and the other officer appointed to visit the Bhagalpur Central Jail.

2. We are informed that there are five under trial prisoners who have already been released on bail and who may not therefore be able to get the benefit of this Court's order dated December 1, 1980. They are Kashi Mandal, Lakhan Lal Mandal, Umesh Yadav, Bhola Choudhary and Chamaklal Rai. Mrs. Hingorani, learned counsel appearing for the petitioners states that there may also be some other under trial prisoners who have been treated in the same barbaric and inhuman manner and who have been released on bail. In order that these under trial prisoners should also be able to obtain proper medical assistance, we direct that if they or any of them appear before the Sessions Judge, Bhagalpur and apply to him that they may be given the facility of being treated in the Rajendra Prasad Ophthalmic Institute which is attached to the All India Institute of Medical Sciences, New Delhi, the State of Bihar will immediately, without any bureaucratic delay, take the necessary steps for bringing them to New Delhi so that they may receive prompt treatment at the Rajendra Prasad Institute at the cost of the State of Bihar.

3. The State of Bihar has been served with the notice of Writ Petition 5670 of 1980, but it has not appeared before us. We are unhappy to find that the State of Bihar has not chosen to appear and place the necessary facts before us which would assist us in deciding that writ petition. We hope and trust that at the next hearing of these writ petitions, the State of Bihar will appear and render necessary assistance to us.

4. We would like to know from the State of Bihar before the next hearing of the writ petitions, as to what are the dates on which the petitioners in these two writ petitions were arrested, when they were first produced before the Magistrate and what were the dates on which they were remanded from time to time. We would also like the State of Bihar to inform us as to how long these petitioners remained in police custody before they were brought to the jail and also, who were the police officers incharge at the time when they were in police custody. We would like to know from the State Government as to whether any legal representation was provided to these petitioners at the time when they were first produced before the Magistrate and when they were remanded from time to time and if they were not provided by the State with any legal representation, we would like to know the reasons why it was not so done despite the pronouncement of this Court in *Hussainara Khatoon (IV)* case. (Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98: 1980 SCC (Cri) 40).

5. We would also like to be informed by the District Judge, Bhagalpur whether he visited the Bhagalpur Central Jail during the year 1980 and whether he saw any blinded prisoners at the time of his visits and if he saw them, whether he enquired of them as to how they were blinded and when. We should also like to be informed by the Magistrate before whom these petitioners were first produced after arrest as also at the time of remand from time to time, whether he saw these blinded petitioners with the scars on their eyes and enquired of them as to how they had been blinded. We are told that there are several directions given by this Court in *Sunil Batra* case (II) (Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488:1980 SCC (Cri) 777) which do not appear to have been carried out by the jail authorities in the State of Bihar. We would like to impress upon the State Government that these directions given by the court represent the law of the land and they have to be carried out by the jail administration. We hope and trust that the needful will be done by the jail administration in the State of Bihar at a very early date so that we are not constrained to make any observations in future in regard to any defaults alleged to have been committed by the jail administration.

6. Subsequent to the dictation of the above order Mrs. Hingorani has appeared before us at 2 p.m. after the luncheon recess and she states that two of the persons who were blinded by the police namely, Salig Ram Sah and Baljit Singh, are present in court. We are shocked to see the plight of these two unfortunate persons who have been the victims of the barbaric cruelty of the police. They are standing before us with their eyes corroded and destroyed and tissues around the eyes burnt and scarred. We direct that they should be immediately received at the Rajendra Prasad Opthalmic Institute and treated there at the cost of the State of Bihar.

And a report may be submitted to us by the doctors who examine them as to what according to them is the cause of their blinding and whether it is possible to restore their eyesight.

7. The State of Bihar is directed to pay to each petitioner and to each of the other under trial prisoners who have been blinded by the police, a sum of Rs. 500 in order to enable him to bring his relation to New Delhi for the purpose of attending on him while he is under treatment at the Rajendra Prasad Ophthalmic Institute, and the State will also pay a sum of Rs. 300 per month for the purpose of his maintenance as long as he is being treated at the Institute.

8. Mr. Goburdhun has appeared on behalf of the State of Bihar at this stage and we therefore direct him to immediately send a Telex to the Government of Bihar through their office in Delhi so that the Government of Bihar may forthwith instruct its official in Bihar Bhawan in Delhi to make payment of the aforesaid amounts in cash to Salig Ram Sah and Baljit Singh and those of the other blinded persons who come or are brought to Delhi for the purpose of treatment at the Institute, unless they have received such payment in Bihar pursuant to this Order made by us.

9. We would also suggest that the Registrar of this Court who is going to Bhagalpur Central Jail for the purpose of investigation as directed by the Order of this Court dated December 1, 1980 should inspect the entries in the jail records and other documents and papers maintained by the jail authorities in Bhagalpur Central Jail, relating to the petitioners and other blinded persons who were brought to the jail as also regarding their movements into and out of the jail and bring authenticated copies of such entries to be submitted along with their report.

10. The trials of the petitioners will in the meanwhile stand adjourned until further orders.

SCALE (PIL) 1981-97 1293

KHATRI AND OTHERS (II) *Petitioners*

VS

STATE OF BIHAR AND OTHERS *Respondents*

CORAM: P.N. BHAGWATI AND A.P. SEN, JJ.

PUBLIC INTEREST LITIGATION — LEGAL AID — CONSTITUTION — ARTICLE 21 — Right to free legal aid to poor or indigent accused who are incapable of engaging lawyers — Held, State is constitutionally bound to provide such aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time — Such right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask for it — Magistrates and Sessions Judges must inform the accused of such right — The right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer — This constitutional obligation of the State is not only

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Order dated December 19, 1980 in W.P. No. 5670 of 1980

limited to the stage of trial but also extends to the stage when the accused is first produced before the magistrate as also when he is remanded from time to time — The State cannot avoid this obligation by pleading financial or administrative inability or that none of the aggrieved prisoners asked for any legal aid at the expense of the State. The Magistrates and Sessions Judges in the country must inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Every State in the country must make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situation. The only qualification would be that the offence charged against the accused is such that on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may, however, be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State. (Paras 5 and 6).

Relied: Rhem vs Malcolm, 377 F Supp 995; Jackson vs Bishop, 404 F Supp 2d 571.

Followed: Hussainara Khatoon (IV) vs Home Secy. (1980) 1 SCC 98.

Bhagwati, J.— This case has now come before us after service of notice on the State of Bihar. When this case was taken up for hearing by us on December 2, 1980, we expressed our displeasure that the State of Bihar had not chosen to appear in answer to the notice, but this expression of displeasure was made by us on the assumption that the notice was served on the State of Bihar. We are however informed by Mr. K.G. Bhagat, learned Advocate, appearing on behalf of the State of Bihar that the notice of the writ petition was served upon the State only on December 6, 1980 and that is the reason why it was not possible for the State to appear before us on December 2, 1980. We accept this explanation offered by Mr. K.G. Bhagat and exonerate the State of Bihar from remissness in appearing before the court on December 2, 1980.

2. The State has filed before us a counter-affidavit sworn by Tarkeshwar Parshad, Under-Secretary, Home (Police) Department of the State Government giving various particulars required by us by our order dated December 2, 1980. We have also before us the counter-affidavit filed by Jitendra Narain Singh, Assistant Jailor, Bhagalpur Central Jail, on behalf of the State and this affidavit gives certain other particulars required by us. The State has also in addition to these particulars, filed statements giving various particulars in regard to the blinded prisoners drawn from the records of the judicial magistrates dealing with their cases. The District & Sessions Judge has also addressed a letter to the Registrar (Judicial) of this Court stating that for the reasons given in his letter, no inspection of the Bhagalpur Central Jail has been carried out by the District & Sessions Judge in the year 1980. The Registrar (Judicial) has also furnished to us copies of the statements of the blinded prisoners and B.L. Das, former Superintendent of the Bhagalpur Central Jail, recorded by him pursuant to the order of this Court dated December 1, 1980. Full and detailed arguments have been advanced before us on the basis of the particulars contained in these documents, but we do not, at this stage, propose to deal with the arguments in regard to each of the blinded prisoners and we shall examine only the broad contentions advanced before us, leaving the arguments in regard to each specific blinded prisoner to be dealt with at a later stage when the writ petition again comes up for hearing.

3. Before we deal with the main contentions urged before us on behalf of the parties, we must dispose of one serious question which raises a rather difficult problem and which has to be resolved with some immediacy. The problem is not so much a legal problem as a human one and it arises because the blinded prisoners who are undergoing treatment in the Rajendra Prasad Ophthalmic Institute, New Delhi are likely to be discharged from that Institute since their vision is so totally impaired that it is not possible to restore it by any medical or surgical treatment, and the question is where they can go. Mrs. Hingorani, on behalf of the blinded prisoners, expressed the apprehension that it may not be safe for them to go back to Bhagalpur, particularly when investigation into the offences of blinding was still in progress and some arrangement should, therefore, be made for housing them in New Delhi at the cost of the State. We cannot definitely state that the apprehension expressed by Mrs. Hingorani is totally unfounded nor can we say at the present stage that it is justified, but we feel that at least until the next date of hearing, it would be desirable not to send the blinded prisoners back to Bhagalpur. We would, therefore, suggest that the blinded prisoners who are discharged from the Rajendra Prasad Ophthalmic Institute, New Delhi should be kept in the Home which is being run by the Blind Relief Association of Delhi on the Lal Bahadur Shastri Marg. New Delhi and the State of Bihar should bear the cost of their boarding and lodging in that Home. We hope and trust and, in fact, we would strongly recommend that the Blind Relief Association of Delhi will accept these blinded prisoners in the Home run by them and look after them until the next hearing of the petition. The State of Bihar will pay by way of advance or otherwise as may be required the costs, charges and expenses of maintaining the blinded prisoners in such Home.

4. The other question raised by Mrs. Hingorani on behalf of the blinded prisoners was whether the State was liable to pay compensation to the blinded prisoners for violation of their fundamental right under Article 21 of the Constitution. She contended that the blinded prisoners were deprived of their eyesight by the police officers who were Government servants acting on behalf of the State and since this constituted a violation of the constitutional right under Article 21, the State was liable to pay compensation to the blinded prisoners. The liability to compensate a person deprived of his life or personal liberty otherwise than in accordance with procedure established by law was, according to Mrs. Hingorani, implicit in Article 21. Mr. K.G. Bhagat on behalf of the State, however, contended that it was not yet established that the blinding of the prisoners was done by the police and that the investigation was in progress and he further urged that even if blinding was done by the police and there was violation of the constitutional right enshrined in Article 21, the State could not be held liable to pay compensation to the persons wronged. These rival arguments raised a question of great constitutional importance as to what relief can a court give for violation of the constitutional right guaranteed in Article 21. The court can certainly injunct the State from depriving a person of his life or personal liberty except in accordance with procedure established by law, but if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty. These were the issues raised before us on the contention of Mrs. Hingorani, and to our mind, they are issues of the gravest constitutional importance involving as they do, the exploration of a new dimension of the right to life and personal liberty. We, therefore, intimated to the counsel appearing on behalf of the parties that we would hear detailed arguments on these issues at the next hearing of the writ petition and proceed to lay down the correct implications of the constitutional right in Article 21 in the light of the dynamic constitutional jurisprudence which we are evolving in this Court.

5. That takes us to one other important issue which arises in this case. It is clear from the particulars supplied by the State from the records of the various judicial magistrates dealing with the blinded prisoners from time to time that, neither at the time when the blinded prisoners were produced for the first time before the Judicial Magistrate nor at the time when the remand orders were passed, was any legal representation available to most of the blinded prisoners. The records of the Judicial Magistrates show that no legal representation was provided to the blinded prisoners, because none of them asked for it nor did the Judicial Magistrates enquire from the blinded prisoners produced before them either initially or at the time of remand whether they wanted any legal representation at State cost. The only execuse for not providing legal representation to the blinded prisoners at the cost of the State was that none of the blinded prisoners asked for it. The result was that barring two or three blinded prisoners who managed to get a lawyer to represent them at the later stages of remand, most of the blinded prisoners were not represented by any lawyers and save a few who were released on bail, and that too after being in jail for quite some time, the rest of them continued to languish in jail. It is difficult to understand how this state of affairs could be permitted to continue despite the decision of this Court in *Hussainara Khatoon (IV)* case (*Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, (1979) 3 SCR 532: (1980) 1 SCC 98: 1980 SCC (Cri) 40). This Court has pointed out in *Hussainara Khatoon (IV)* case which was decided as far back as March 9, 1979 that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. It is unfortunate that though this Court declared the right to legal aid as a fundamental right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. We regret this disregard of the decision of the highest court in the land by many of the States despite the constitutional declaration in Article 141 that the law declared by this Court shall be binding throughout the territory of India. Mr. K.G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to an indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in *Rhem v. Malcolm*, 377 F Supp 995, "the law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty" and to quote the words of Justice Blackmum in *Jackson v. Bishop*, 404 F Supp 2d 571 "humane considerations and constitutional requirements are not in this day to be measured by dollar considerations". Moreover, this constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time.

6. But even this right to free legal services would be illusory for an indigent accused unless the Magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There is so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. The Magistrate or the Sessions Judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. Unfortunately, the Judicial Magistrates failed to discharge this obligation in the case of the blinded prisoners and they merely stated that no legal representation was asked for by the blinded prisoners and hence none was provided. We would, therefore, direct the Magistrates and Sessions Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Unless he is not willing to take advantage of the free legal services provided by the State, he must be provided legal representation at the cost of the State. We would also direct the State of Bihar and require every other State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situation. The only qualification would be that the offence charged against the accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State.

7. There are two other irregularities appearing from the record to which we think it is necessary to refer. In the first place in a few cases the accused persons do not appear to have been produced before the Judicial Magistrates within 24 hours of their arrest as required by Article 22 of the Constitution. We do not wish to express any definite opinion in regard to this irregularity which prima facie appears to have occurred in a few cases, but we would strongly urge upon the State and its police authorities to see that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. It is also clear from the particulars furnished to us from the records of the Judicial Magistrates that in some cases particularly those relating to Patel Sahu, Raman Bind, Shaligram Singh and a few others the accused persons were not produced before the Judicial Magistrate subsequent to their first production and they continued to remain in jail without any remand orders being passed by the Judicial Magistrates. This was plainly contrary to law. It is difficult to understand how the State continued to detain these accused persons in jail without any remand orders. We hope and trust that the State Government will inquire as to why this irregularity was allowed to be perpetrated and will see to it that in future no such violations of the law are permitted to be committed by the administrators of the law. The provision inhibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police.

8. We also cannot help expressing our unhappiness at the lack of concern shown by the Judicial Magistrates in not enquiring from the blinded prisoners, when they were first produced before the Judicial Magistrates and thereafter from time to time for the purpose of remand, as to how they had received injuries in the eyes. It is true that most of the blinded prisoners have said in their statements before the Registrar that they were not actually produced before the Judicial Magistrates at any time, but we cannot, without further inquiry in that behalf, accept the ex parte statement of the blinded prisoners. Their statements may be true or may not be true; it is a matter which may require investigation. But one thing is clear that in the case of almost all the blinded prisoners, the forwarding report sent by the Police Officer-in-Charge stated that the accused had sustained injuries and yet the Judicial Magistrates did not care to enquire as to how injuries had been caused. This can given rise only to two inferences; either the blinded prisoners were not physically produced before the Judicial Magistrates and the Judicial Magistrates mechanically signed the orders of remand or they did not bother to enquire even if they found that the prisoners before them had received injuries in the eyes. It is also regrettable that no inspection of the Central Jail, Bhagalpur was carried out by the District & Sessions Judge at any time during the year 1980. We would request the High Court to look into these matters closely and ensure that such remissness on the part of the judicial officers does not occur in the future.

9. We would also like to advert to one ore matter before we close and that is rather serious matter. It appears from the record at one blinded prisoner by the name of mesh Yadav sent a petition to the District Sessions Judge, Bhagalpur, on July 30, 80 complaining that he had been blinded Shri B.K. Sharma, District Superintendent Police and since he had no money to osecute this police officer, he should be ovided a lawyer at government expense so at he might be able to bring the police rocities before the court and seek justice. en other blinded prisoners also made a milar petition and all these petitions were rwarded to the District & Sessions Judge July 30, 1980. The District & Sessions dge by his letter dated August 5, 1980, dressed to the Superintendent of the agalpur Central Jail stated that there was provision in the code of criminal ocedure under which legal assistance could provided to the blinded prisoners who had ade a petition to him and that he had rwarded their petitions to the Chief Judicial agistrate for necessary action. The Chief dicial Magistrate also expressed his ability to do anything in the matter. It pears that the Superintendent of the agalpur Central Jail also sent the petitions these blinded prisoners to the Inspector eneral of Prisons, Patna on July 30, 1980 ith a request that this matter should be ought to the notice of the State overnment. The Inspector General of isons forwarded these petitions to the ome Department. The Inspector General of isons was also informed by three blinded isoners on September 9, 1980 when he sited the Banka Jail that they had been inded by the police and the Inspector eneral of Prisons observed in his inspection te that it would be necessary to place the atter before the government so that the lice atrocities may be stopped. The facts sclose a very disturbing state of affairs. In the first place we find it difficult to appreciate why the Chief Judicial Magistrate to whom the petitions of these blinded prisoners had been forwarded by the District & Sessions Judge did not act upon the complaint contained in these petitions and either take cognizance of the offence revealed in these petitions or order investigation by the higher police officers. The information appearing in these petitions disclosed very serious offences alleged to have been committed by the police and the Chief Judicial Magistrate should not have nonchalantly ignored these petitions and expressed his inability to do anything in the matter. But apart from that, one thing is certain that within a few days after July 30, 1980 the Home Department did come to know from the Inspector General of Prisons that according to the blinded prisoners who had sent their petitions, they had been blinded by the police, and from the inspection note of the Inspector General of Police it would seem reasonable to assume that he must have brought the matter to the notice of the government. We should like to know from the Inspector General of Prisons as to who was the individual or which was the department of the State Government to whose notice he brought this matter and what steps did the State Government take on receipt of the petitions of the blinded prisoners forwarded by the Inspector General of Prisons as also on the matter being brought to their attention by the Inspector General of Prisons as observed by him in his inspection note. We should like the State Government to inform us clearly and precisely as to what steps they took after July 30, 1980 to bring the guilty to book and to stop recurrence of such atrocities. We want to have this information because we should like to satisfy ourselves whether the blindings which took place in October 1980 could have been prevented by the State Government by taking appropriate steps on receipt of information in regard to the complaint of the blinded prisoners from the Inspector General of Prisons. We would direct the State Government to furnish us full and detailed particulars in this behalf before the nex hearing of the writ petition.

10. The writ petition will now be take up for further hearing on January 6, 1981.

SCALE (PIL) 1981-97 1300
UPENDRA AND OTHERS *Petitioner*
VS
STATE OF M.P. AND ANOTHER *Respondent*

CORAM: P.N. BHAGWATI, CJI. AND S. NATARAJAN, J.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — CONSTITUTION — ARTICLE 32, 21 & 23 — Identifying and releasing of bonded labourers not enough but thei rehabilitation is equally important — State directed to take steps to rehabilitate bonded labourers — Commissioner appointed by the Court for identifying bonde labourers and submitting report to Collector.

1. The counter-affidavit in this writ petition states that five persons have been identified as bonded labourers and they had been released from bondage and that efforts are being made to rehabilitate them. We wish to emphasise what we have been saying time and again that it is no use identifying and releasing bonded labourers unless provisions are also made for their rehabilitation as otherwise we would be driving them to starvation. It is therefore necessary that as soon as the bonded labourers are identified and released the State Government should be in a position to rehabilitate them and there is no reason why the State Government should not be in a position to do so particularly with regard to the various schemes sponsored by the Central Government as also the subsidies given by the Central Government for this purpose. We would therefore direct that these five persons should be immediately rehabilitated and report submitted to this Court by October 13, 1986 as to what is the manner in which they have been rehabilitated.

2. Learned counsel for the State of Madhya Pradesh informs us that some othe bonded labourers have also been identifie in some areas in regard to which other wri petitions have been filed and which are before us. We would direct that these bonde labourers should also be released an rehabilitated immediately and the report o the State Government to be made on or before October 13, 1986 will give particulars of such bonded labourers and the rehabilitation measures already taken to rehabilitate them.

3. We would also appoint Mr. P.V. Rajagopal, Prayog Samaj, Sewa Sansthan, Post Office Tilda Neora, PIN 493 114, District Raipur, M.P. as Commissioner to visit the villages Bagaijore, Paisada, Durgapalli, Bhanwarpur, Icchapur and Sighnapur in District Raipur and ascertain whether there are any more bonded labourers in thes villages and if so to identify them and bring their names and particulars immediately to the notice of the Collector of Raipur for the purpose of releasing and rehabilitating them. The Commissioner will submit a report to this Court on October 13, 1986 and copies of the

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Order dated September 25, 1986 in W.P. (Civil/Cri.) No. 1071 of 1986.

ame may be supplied to the advocates oncerned. The State Government will leposit with the Collector of Raipur a sum f Rs 1000 to meet the cost, charges and xpenses of the Commissioner who will be t liberty to withdraw the same in order to reimburse his cost, charges and expenses. The District Authority of Raipur will render all assistance required by the Commissioner for the purpose of carrying out his assignment. The matter is adiourned to October 13, 1986.

SCALE (PIL) 1981-97 1301

KUTTI PADMARAO, GEN. SEC. *Petitioner*

VS

STATE OF A.P. *Respondent*

CORAM: P.N. BHAGWATI, CJI., RANGANATH MISRA AND V. KHALID, JJ.

PUBLIC INTEREST LITIGATION — ALLOTMENT — REHABILITATION OF HARIJANS — Allotment of alternative land to Harijan families — State Government directed to file affidavit stating which alternative site would be allotted — Affidavit not filed — One more opportunity granted.

1. Mr. Madhavan, Commissioner appointed by us has submitted a detailed and well documented report stating the position in regard to the Harijan families settled on the land in village Nakkalapalam. The report substantially bears out the allegations made in the writ petition and it shows that there are still some Harijan families who are on the site and they have not yet been given alternative site where they can shift. Mr Ramkumar, learned advocate for the respondent states that the State Government is willing to give alternative site to these Harijan families. If that is so the State Government must make an affidavit by a responsible officer stating out, which site the State Government is willing to offer as an alternative site to these Harijan families who are still on the land in Nakkalapalam village. The State Government will file an affidavit within three weeks from today and supply a copy thereto to the learned advocate on behalf of the petitioners. We are informed that the landlord Shri Yeluraru Ramjaneyulu alias Ram Babu has filed a Writ Petition No. 5426/86 in the High Court of Andhra Pradesh and obtained a stay order against allotment of site and grant of pattas to the Harijan families. It is pointed out in the report by Mr Madhavan that this stay order has to some extent been responsible for non-allotment of site to the Harijan families. We would therefore request the High Court of Andhra Pradesh to dispose of the writ petition at a very early date so that whatever impediment there may be in the way in allotment of site to the Harijan families may be removed. The writ petition will stand adjourned to October 1, 1986 for final hearing. The interim order made by us will continue.

Ed. Note : Further interim Order dated October 1, 1986 of P.N. Bhagwati, C.J. and Ranganath Misra and V. Khalid, JJ. as recorded by the Court Master is set out below:

1. We directed by our order dated September 1, 1986 that the State Government

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Order dated September 1, 1986 in W.P. (C) No. 725 of 1986.

will file affidavit within three weeks from the date of the order setting out which site the State Government is willing to offer as alternative site to the Harijan families who are still on land in Nakkalapalam village. Though this period expired long back no affidavit has so far been filed by the State Government. We would like to express our sense of displeasure that the order made by us has not been carried out and even today the affidavit is not ready. We would have ordinarily directed a responsible officer of the government to remain present in court at the next hearing. But since the stay order has already been granted protecting the Harijan families we would give one more opportunity to the State Government. The writ petition adjourned to October 27, 1986. The Stat Government will do the needful on or befor October 14, 1986 and supply a copy of thei affidavit to the advocate for the petitioner Meanwhile, the Harijan families at th Nakkalapalam village will not be disturbed The High Court will dispose of C.A. No 5326/86 at an early date as was directed earlier. Copy of this order may be forwarded to the Registrar of the High Court containing our request as made in the earlier order and he may intimate to this Court on or before October 21, 1986 whether the writ petition at the High Court has been disposed of or not.

SCALE (PIL) 1981-97 1302

SPECIAL WORKS AND RESEARCH CENTRE THROUGH SANJIT ROY AND OTHERS *Petitioners*

VS

STATE OF RAJASTHAN *Respondent*

CORAM: P.N. BHAGWATI, CJI., G.L. OZA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — LABOUR LAW — MINIMUM WAGES — Workers engaged in drought relief operation — State Government proposing to take decision on minimum wages — Meanwhile Central Government advised to provide necessary assistance to State Government — Constitution of India — Article 32 and 21.

1. Writ Petitions are adjourned to October 14, 1986.

2. The learned counsel appearing on behalf of the respondent states that the State Government is considering favourably the question of issuing a notification in accordance with the recommendations made by the Committee and that the decision will be reached very shortly and if it is decided to issue such notification, it will be done without any delay before the next hearing of the writ petitions. But since the acceptance of the recommendations of the Committee and issue of notification in accordance therewith as well as the implementation of the interim order made by this Court for payment of minimum wages to workers engaged in drought relief work will involve a financial burden of almost rupees twenty crores, we hope and trust that the Central Government will provide necessary assistance to the State Government at an early date since the minimum wages required to be paid are for a work given by way of famine relief operations. We would expect the Central Government to take up its decision at the earliest in order to enable the State Government to see that the workers who are engaged in famine relief work get their

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Order dated September 26, 1986 in W.P. (C) Nos. 279, 282 and 337 of 1986. [1986(2) SCALE 688] minimum wages. Learned counsel appearing on behalf of the respondent also states that the necessary directions have already been issued by the court but again a circular may be issued in order to ensure that earlier directions given by this Court by its order dated September 5, 1986 are fully implemented.

SCALE (PIL) 1981-97 1303

WORKERS OF M/S ROHTAS INDUSTRIES *Petitioners*

VS

M/S ROHTAS INDUSTRIES LTD. *Respondent.*

CORAM: RANGANATH MISRA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — SICK INDUSTRIES — ROHTAS — Labour Law — Closure of Undertaking — Relief — Payment of wages due to workers by selling goods lying in stock in compliance with Court's earlier order dated April 27, 1987 — Further time granted for disposal of the goods — Directions issued regarding payment of wages as also payment of sales tax, excise duty etc. — Industrial Disputes Act, 1947, Sections 25-FFF and 25-FF — Constitution, Article 32.

Referred: Workers vs M/s Rohtas Industries Ltd., (1987) 2 SCC 588.

1. The Official Liquidator has moved this Court for allowing two months' further time for effecting sales and thereby raising funds with a view to complying with the directions given by this Court on April 27, 1987 ((1987) 2 SCC 588: 1987 SCC (L & S)124). There is no objections to the grant of time Counsel on behalf of the workmen points out that such a long time is not necessary.

2. We are told that tenders have already been received and it is for the Official Liquidator to open them and after appropriate processing place them before the learned Company Judge of the High Court for directions. By the end of the next week the Official Liquidator should complete the processing and on August 3, 1987, the papers may be placed before the learned Company Judge. We hope and trust that it would be possible for the learned Company Judge to dispose of the matter within three weeks, that is, by August 24, 1987. Within a fortnight thereafter, the Official Liquidator may raise the funds so that by September 21, 1987, disbursement of the dues of the workmen in terms of our previous order can be effected.

3. The Official Liquidator has pointed out that he had required the company to give a list of workmen and the rate at which they were being paid. Grievance is made that there has been no compliance. Dr. Chitale appearing for the company has assured us that the requisite information would be supplied within seven days from today to the Official Liquidator.

4. The Official Liquidator has further pointed out that the transactions proposed to be effected by him attract the liability of sales tax and excise duty. It is further represented that there has been a tentative valuation of the goods intended to be sold. The dues of the workmen directed to be paid have also been approximately quantified. The gap is small and unless the Official Liquidator is able to dispose of the goods at a higher price than what has been estimated, it would be difficult for him to meet the demand of sales tax, excise duty as also the wages of the

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Order dated July 22, 1987 in W.P.(C) No. 5222 of 1985. [1987(2) SCALE 79] workmen. Faced with this situation, the Official Liquidator has asked for directions as to how he can comply with the order after meeting the statutory liabilities.

5. In the order of April 27, 1987, this Court has already indicated the peculiar circumstances of the case. Those considerations were kept in view when the various claims of the financial institutions were brushed aside from immediate consideration and the wages for the limited period were directed to be disbursed. The same considerations are also germane now when the question of meeting the tax liabilities crops up.

6. After the sale proceeds are received by the Official Liquidator, if he finds that sufficient surplus funds remain in his hands after paying the wages as directed, he would pay the taxes - sales tax and the excise duty. In case there be no surplus, payment of the taxes may be deferred for some time and the Official Liquidator is directed to explore possibilities of tapping other sources for raising funds to meet those liabilities. The workmen have been facing challenge to their lives and this Court on the earlier occasion indicated that in fixing priorities, saving of human lives should be paramount. We endorse that view. That has been the consideration for postponing payment of the public dues, if necessary.

7. Two financial institutions, namely, the State Bank of India and the United Bank of India have applied for clarifications and modifications of the order dated April 27, 1987. We have no difficulty in saying that that order of this Court was made under peculiar circumstances obtaining in this case and may not be taken as a precedent. Whether the company's assets are sufficient to meet all the liabilities is a matter which is yet to be seen and this Court really intended to say that there were other assets against which the financial institutions could pitch their claims. So far as the remaining prayer of the banks is concerned, they have asked the court to say that the payments to the workmen should be considered as coming within Section 529 and 529-A of the Companies Act of 1956. Nothing would be said in that behalf now as a proposal for restructuring of the company is very much afoot and if it materialises, that would obviously save the company from being wound up. Therefore, until the eventuality of winding up comes no orders in that behalf are necessary to made.

8. Learned Attorney General appearing for the Union of India was to make a statement as to the stage regarding revival of the company. He is not available and request on his behalf has been made for adjournment. We direct the matter to be called on July 30, 1987, when the learned Attorney General would on the basis of up-to-date instructions make a statement to this Court in that regard.

SCALE (PIL) 1981-97 1304
MUKTHI SANGARSH MOVEMENT *Petitioner*
VS
STATE OF MAHARASHTRA AND OTHERS *Respondents*

CORAM: RANGANATH MISRA, P.B. SAWANT AND K. RAMASWAMY, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — ECO-BALANCE — Allegation of reckless exploitation of sand adversely affecting the river bed — Committee of experts suggesting confining the area of exploitation — Report of the Committee

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Order dated November 10, 1989 in W.P. (C) No. 568 of 1988.

maintaining proper balance between the need for the river to flow unaffected with its bed left intact and the local needs of sand — Affidavit filed on behalf of the State indicating that the guidelines framed by the Committee are being followed.

1. This is an application under Article 32 of the Constitution and is a Public Interest Litigation, Kerala river running through some of the districts of Maharashtra ultimately joins river Krishna. On the allegation that the sand from the river is being exploited in a reckless manner and thereby the river bed is adversely affected, this writ petition was filed in this Court asking for stopping of commercial quarrying of sand and regulating excavation and other activities connected with commercial exploitation of sand keeping in view the safety of the river bed and the adjoining area. On notice the State of Maharashtra has filed its counter-affidavit and a copy of the report of a Committee of Experts appointed by the government under the Chairmanship of the Collector of Sangli. We find from the report that in the deliberations preceding the making of the report, sub-committees had been set up and several meetings were held dialogue continued over all material aspects for quite some time, the study that was undertaken involved Geology and Hydrogeology experts. Several relevant aspects were taken into consideration on the basis of such study, then the report was prepared and a copy thereof has been placed before the court. The Committee was of the view that exploitation of sand from the river should be minimised and suitable sites for sand excavation should be identified and exploitation should be confined to such sites only.

2. Paragraph 7.2 of the report deals with this aspect. The Committee also indicated that for selecting mining sites and quantity to be excavated, a team consisting of the Deputy Director, Geology and Mining Department, Kolhapur, the concerned Tehsildar and a representative of the Collector should be set up. The Committee was also of the view that a set of rules should be framed for regulating the exploitation of sand so as to avoid where (*sic* any) environmental effect on the river. For instance in paragraph 7.3 of the report the Committee indicated:

(1) No sand should be excavated within 2 meters from the river bank.

(2) Depth of sand to be excavated should not be more than 1 metre.

(3) A safe distance of 50 metres should be left while there is excavation of sand in the periphery of existing structures like dam, bridges, road, jackwells and any other public structures.

(4) Permits of excavation of sand to cater to the local need for construction of houses, wells etc. up to 20 brass sand may be given by Tehsildars to the local people living within a distance of 8 k.m. of either side of the river bank.

With a view to reducing the demand of sand the affidavit filed on behalf of the State of Maharashtra indicates that the guideline framed by the committee is being strictly followed and care is being taken to ensure that the river bed is not affected. We find from the report that it recommends that the position should be reviewed every year and the policy decision regarding auctioning of sand from the river should, therefore, be made dependent upon the result of such review.

3. The Committee referred to above seems to have been manned by experts. All relevant angles have been kept in view while considering the problem. The need for the river to flow unaffected with its bed left intact and yet local needs in respect of sand will have to be allowed to be satisfied by allowing removal of some sand from the river bed have been balanced and ultimately measures for regulation have been formulated. The Collector in his affidavit indicates that he has been exercising regulatory supervision and actions taken in the year after the submission of the report are said to be in consonance with the recommendations of the Committee.

4. The main apprehension of the petitioner, a local social activist organisation is that by excessive user of sand from the river bed and by overlooking the need of protecting the river bed intact, the water source for the local people may ultimately dry up and the outcome may be serious. Water source throughout the ages has been a great attraction in growth of human habitation and in the event of the river ceasing to carry water for the people inhabiting the two banks thereof would certainly give rise to a situation which cannot be otherwise answered. While we appreciate the interest taken by the petitioner-society in the matter, we are of the view that the care taken by the Committee and the approach adopted by the authorities seem to exhibit their aliveness to the situation and no intervention of the court at the present state is warranted. However, we would like to direct the local authorities to continue to take proper care in dealing with the situation and if upon review as indicated, further instructions are necessary, the Committee shall introduce further checks to balance the preservation of the natural gift and the social consumption in such a way that the water source would not be affected and the people living on either bank of the river throughout its course are deprived of their supply of water. We give liberty to the petitioner to move either the High Court or this Court in the event of any change in the situation or any eventuality which in its opinion requires a further guidance in dealing of the matter.

5. No order as to costs.

SCALE (PIL) 1981-97 1306

BHOLANATH TRIPATHI *Petitioner*

VS

STATE OF U.P. *Respondent*

CORAM: M.N. VENKATACHALIAH AND K. RAMASWAMY, JJ.

PUBLIC INTEREST LITIGATION — RIGHTS OF WOMEN — Sexual Exploitation — Woman held in confinement and used for earning money by prostitution — Allegation regarding — Commissioner appointed by Court to make enquiry who if prima facie satisfied about the allegation directed to have the woman removed to a safe place and secure her production before the court — Police and concerned authorities of State Government directed to afford assistance — Court also deprecated the delay in listing the matter.

1. The letter dated June 23, 1989 addressed to the Hon'ble Chief Justice of India by a certain Bholanath Tripathi, a journalist, which has been registered as a writ petition, brings to the notice of this Court the sad plight of Kanchan Devi who is stated to have been held in captivity and forced into prostitution by a certain Janak Dulare Srivastava.

Order dated November 6, 1989 in W.P. (Crl.) No. 473 of 1989

2. The situation described in Bholanath Tripathi's letter and in that of Kanchan Devi to the former, on the basis of which the present letter petition was presented, if true, are indeed lurid and sordid. According to the allegations, the said Srivastava is stated to have paid Rs. 45,000 to Kanchan Devi's father and that under the guise of a marriage the said Srivastava is holding her in confinement and using her to earn money from prostitution. If the grievance of the lady turns out to be genuine, the delay in listing the matter before the court would, indeed, be unfortunate. The letter was received in June 1989, and the matter is listed before the court nearly five months thereafter.

3. Prima facie, the letter petition bears serious scrutiny and investigation. Some urgent interim action is also necessary to save the lady from further indignity and violations of her person.

4. We asked the Supreme Court Legal Aid Committee to nominate a learned counsel to act as a Commissioner in this case. On its suggestion we appoint Shri Mahesh Prasad Saxena as Commissioner of the court, who will proceed immediately to the place of the alleged confinement set out in the letters of Bholanath Tripathi and the letter of Kanchan Devi on the basis of which Shri Bholanath Tripathi sent the letter petition and record the statement of Kanchan Devi to ensure the authenticity of the letter and its allegations. If the Commissioner is, prima facie, satisfied as to the identity of the lady and the circumstances disclosed in her letter, the Commissioner will take immediate steps to have her removed to a safe place preferably to a Rescue Home and ensure her production before this Court on November 9, 1989. The Commissioner may enlist the help and assistance of Bholanath Tripathi, if he is readily available.

5. The Superintendent of Police, Azamgarh, is hereby directed to give the requisite police assistance to the Commissioner in the execution of the Commission by providing the requisite number of police personnel of appropriate rank to assist the Commissioner in the task. All other authorities of the State Government are also directed to afford such assistance to the Commissioner as he may require in the discharge of his duties under this order. A copy of this order shall be sent to the Home Secretary to the Government of Uttar Pradesh to ensure compliance with its terms. Copies of the letters of Bholanath Tripathi and Kanchan Devi referred to above shall be made available by the Registry to the Commissioner forthwith. Copies of the letters shall also accompany the copy of the order to be sent to the Home Secretary as well.

6. Call on November 9, 1989.

SCALE (PIL) 1981-97 1307
V. SUBRAMANIAN *Petitioner*

VS

UNION OF INDIA AND ANOTHER *Respondents*

CORAM: RANGANATH MISRA, V. RAMASWAMI AND P.B. SAWANT, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — Matter transferred to High Court within whose jurisdiction the factory causing the alleged air pollution was situated — Petition to be treated as one under Constitution - Article 226.

Order dated April 9, 1990 in W.P. (C) No. 328 of 1990

1. This petition has been received by post alleging air pollution by the cement factory at Ariyalur (Tamil Nadu). We are of the view that this petition should be transmitted to the Madras High Court for disposal in accordance with law by treating the same as one under Article 226 of the Constitution. The notice shall be issued to the respondents and on the basis of the counter-affidavit filed by them, the matter should be proceeded with.

SCALE (PIL) 1981-97 1308

SUPREME COURT LEGAL AID COMMITTEE
THROUGH ITS HONY. SECRETARY *Petitioner*

VS

STATE OF BIHAR AND OTHERS *Respondents*

CORAM: RANGANATH MISRA, CJI. AND P.B. SAWANT, J.

PUBLIC INTEREST LITIGATION — MEDICARE — PERSONS TAKEN INTO POLICE CUSTODY — Negligence and failure to give proper medical aid to an injured person taken in police custody resulting in his death — Affidavit of Dy. S.P. indicating that timely medical care by the concerned police official would have saved the life of the victim — Whether it is the obligation of the police particularly after taking a person in custody to ensure appropriate protection of the person taken into custody including medical care if such person needs it — Held, Yes — In the circumstances State of Bihar is directed to pay compensation of Rs. 20,000 (which is ordinarily paid in case of death) to the legal representatives of the deceased.

1. This is an application under Article 32 of the Constitution on behalf of the Supreme Court Legal Aid Committee alleging on the basis of information published in the *Illustrated Weekly of India* of July 2, 1989 inhumane behaviour meted out to a person in police custody. On notice being issued an affidavit was filed by a Deputy Superintendent of Railway Police, Jamalpur within the State of Bihar narrating the details of the incident in which the victim Mahesh Mahto had been injured when the passengers of a railway train where looting had been done by a crowd had beaten up several persons including the victim. Mahesh had received serious injuries and had to be taken to the hospital for treatment. As no transport was available a rickshaw was hired for the purpose of removing the injured to the hospital. By then the injured had become unconscious and the Havaldar tied him with rope to the footboard of the rickshaw. The counter-affidavit accepts the position that no timely treatment was provided to the injured. Had proper attention been given the injured could perhaps have been saved from the clutches of death. It appears that disciplinary proceedings has been taken against the delinquent Havaldar. Since this affidavit was not considered sufficient by this Court, a further affidavit was filed along with a copy of the post-mortem report after the victim died.

2. We are surprised that the State has not considered it appropriate in the facts and circumstances appearing in the record to take a serious view of the matter as it deserved. As the affidavits of the Deputy

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Order dated March 4, 1991 in W.P. (Crl.) No. 303 of 1989

Superintendent indicate if appropriate attention had been given and timely medical care had been provided the life of the victim could perhaps have been saved. It is the negligence of the Havaldar that has led to the death. It is the obligation of the police particularly after taking a person in custody to ensure appropriate protection of the person taken into custody including medical care if such person needs it.

3. Taking note of the facts and circumstances appearing on the record, we direct that the compensation of Rs. 20,000 —- such a sum is ordinarily paid in the case of death — shall be paid by the State of Bihar to the legal representatives of Mahesh Mahto. The amount shall be deposited with the District Judge, Munger and the District Judge is directed to institute a proper inquiry to satisfy himself as to who the heirs of the deceased Mahesh Mahto are. The amount of Rs. 20,000 shall be paid to them by the District Judge and in case he is of the view that the money should be held in a long term fixed deposit in favour of the rightful heir it is open to him to do so. A compliance report of this direction be furnished to the Registry of this Court within three months.

SCALE (PIL) 1981-97 1309

RAJANGAM, SECRETARY,
DISTRICT BEEDI WORKERS' UNION *Petitioner*

VS

STATE OF TAMIL NADU AND OTHERS *Respondents*

CORAM: RANGANATH MISRA, CJI. AND YOGESHWAR DAYAL, J.

PUBLIC INTEREST LITIGATION — RIGHTS OF CHILDREN — CHILD LABOUR — BEEDI AND CIGAR WORKERS (CONDITIONS OF EMPLOYMENT) ACT, 1966 — Complaint made about manipulation of records regarding employees, non-payment of appropriate dues of work taken, failure to implement the provisions of the labour laws, prevalence of contract labour system — A social organisation (Society for Community Organisation Trust) appointed for making investigation and submitting report to the Court — After receipt of report from the Society, a scheme directed to be formulated for consideration of this Court — In response two schemes, one prepared by the petitioners and the other by the State of T.N. submitted — Directions issued by Court on the basis of the two schemes — T.N. State Legal Aid and Advice Board directed to undertake supervision for implementation of the directions/ scheme for three years and T.N. Govt. and the said Board directed to coordinate the implementation.

Ranganath Misra, CJI.— A letter petition received from the District Beedi Workers' Union, Tirunelveli in the State of Tamil Nadu was treated as an application under Article 32 of the Constitution and notice was ordered initially to three factories referred to in the said letter and later to other beedi manufacturing units within the State. In the

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Judgment dated November 19, 1991 in Writ Petition (civil) No. 1262 of 1987 with Writ Petition (civil) No. 13064 of 1983 (K. Chandra Segaram vs State of Tamil Nadu and Others.)

letter, complaint was made about manipulation of records regarding employees, non-payment of appropriate dues of work taken, failure to implement the provisions of the labour laws, prevalence of contract labour system etc. There is a connected petition also relating to the same subject matter with different ancillary reliefs covering employment of child labour and the non-implementation of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. We have considered it appropriate to deal with both the applications together.

2. This court by an order dated October 24, 1989 appointed a social organisation by name 'Society for Community Organisation Trust' (SOCCO) for making appropriate investigation and furnish a report to the Court. After the Report was received and circulated, the State Government of Tamil Nadu and the manufacturers were given time to file their response by way of affidavits. This Court then directed that a Scheme should be formulated for consideration of the Court. This Court made an order on July 24, 1991 to the following effect:

> "We gather from the submissions made at the bar that in the meantime some exercise has been undertaken for the purpose of finalising the Scheme. Initially the State of Tamil Nadu had taken the lead but later Union of India has also got interested and meeting on a bigger scale for the purpose of finalising the Scheme is being arranged. The Attorney General is present in court today. We have also suggested to him that he may participate in the proceedings to help the Scheme to be finalised as quickly as possible."

3. Then came two Schemes, one by the petitioners and the other by the State of Tamil Nadu. By order dated October 8, 1991, the Court directed on the basis of consent of counsel that at a conference the terms should be settled for one Scheme to be adopted by the Court. On October 10, 1991, on the representation of the parties, the Court made the following order:

> "Pursuant to our earlier direction, the employers, employees and the State Government through their representatives met and have sorted out some of the differences. Matters which are agreed to by all and aspects which are not agreed to by the employers have been separately shown. A copy of this may be served on counsel for the Union of India present in the Court today and he is given three weeks' time to indicate the responses. The appropriate Ministry of the Government of India to respond to the relevant aspects."

Pursuant to this order, the Under Secretary in the Ministry of Labour of the Union Government has field an affidavit which we have examined.

4. The objections which have been especially referred to in the affidavit of the Central Government do not really survive after the matter is heard inasmuch as these are questions with which the Union Government is not concerned and under the constitutional scheme, they relate to the power of the State Government. We would like to dispose of these petitions with the following directions taken from the schemes as formulated by the petitioners and the State Government:

(1) The Beedi and Cigar Workers (Conditions of Employment) Rules, 1968 should be strictly implemented and once that is done the evil of not furnishing the books to the home workers would be eradicated.

(2) An establishment of the Regional Provident Fund Commissioner with full equipment for the purpose of implementation of the statute should be located within the area and the Regional Provident Fund Commissioner should have directions to

enforce the Act in all aspects. This establishment should start functioning within three months from now.

(3) The labour laws as also the Beedi and Cigar Workers (Conditions of Employment) Act should be strictly enforced so that the workers get their legitimate dues and the conditions of employment improve.

(4) Tobacco manufacturing has indeed health hazards. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Governments but within a period not exceeding three years from now. The provisions of Child Labour Abolition Act, 1986 should be strictly implemented.

(5) Contract labour system, it is alleged, is indispensable in this trade. This Union Government is directed to look into this aspect of the matter and take its final decision one way or the other within six months from now.

(6) Beedi trade is a flourishing one. Exploitation of labour is rampant in this trade. A government labour establishment should be located in the area with full complement to answer the requirements of the matter.

(7) Since beedi manufacturing process is carried more outside the factory than within, the system of maintaining the registers as a regulating practice has become necessary. Great care should, therefore, be taken to ensure the maintenance of the register system as the bulk of the employees outside the factories can be regulated only through the record maintained in the registers.

(8) The Beedi Workers Welfare Cess Act, 1976 and the Beedi Workers Welfare Fund Act, 1976 which contain beneficial provisions should be implemented in the true spirit and since they are legislations of the Central Government, the machinery of the Central Government should be made operational in the area.

(9) Grievance has been made that the pass books are not maintained in the names of actual workers. This should be ensured.

(10) The Welfare Fund should be properly administered after (*sic*) and in the case of death of a workman appropriate assistance should be extended out of the Fund quickly.

(11) In view of the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs. 50,000 and the premium should be paid by the employer and the incidence should not be passed on to the workman.

5. We are of the view that the implementation of the Scheme within the State in an effective manner would require to be supervised by an independent external agency. The Tamil Nadu State Legal Aid and Advice Board can be entrusted with this responsibility. A three year period of such supervision, in our opinion, would meet the requirement and at the end of such period the Scheme is expected to become effectively operative. We, therefore, require the Tamil Nadu Board to undertake the supervision from January 1992 and we direct the Tamil Nadu Government and the said Board to coordinate the implementation. The Secretary of the Tamil Nadu Board, Mr. Raja, who would be mainly in charge of the field job shall be paid a sum of Rs 1500 (fifteen hundred) per month from January 1992, as an allowance to meet out of pocket expenses by the State Government for the period he does the work as Secretary of the Board.

6. We dispose of these cases with the directions indicated above and hope and trust that the authorities as also the employers and the employees would try to implement the directions in true spirit. Liberty to apply.

SCALE (PIL) 1981-97 1312

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — PUBLIC PARKS IN DELHI — Use of — Frequent use of the same for marriages and other functions resulting in degradation of environment and its utility as a recreation area — Court issues certain directions prohibiting their use for non-recreational purposes and or commercial purposes.

I.A. No. 34 in W.P. (C) 4677/1985

1. Mr. M.C. Mehta has raised two points in this application. It is stated that on the site where the Musical Dancing Fountain Park is situated, a Camp Office Complex for the use of the Chief Minister, Delhi has been constructed. It is stated that the construction and the use of the Camp Office is in such a way that the recreation capacity of the Fountain/Park is obstructed/curtailed. We request Mr. Ranjit Kumar, Mr. Krishan Mahajan and Mr. Vijay Panjwani, learned counsel, to visit the place and give their comments regarding the status of the area.

2. To come up on December 13, 1996.

3. The second point raised by Mr. Mehta is that large number of Parks in the City are being used for construction of marriage pandals and for hoisting other functions etc. According to Mr. Mehta, the frequent use of Parks for such purposes, is bound to degrade the environment and the utility of the Parks as a recreation for the public. Mr. Shyam Sunder Aggarwal, Deputy Director, (Horticulture), MCD has filed affidavit. It is stated in the affidavit that only 1023 parks/ Tot lots out of 12000 parks/Tot lots in Delhi are permitted for such functions. It is further stated that there are 141 Community Halls for these purposes. But since the demand is very large, the Community Halls are not sufficient to hoist all the functions throughout the year. We agree with Mr. Mehta that the recreational and other aesthetic uses of the Parks cannot be curtailed. Mr. Mehta is also correct that the permitted use of the parks being recreation under the Master Plan, it cannot be permitted for any other use. But at the same time, keeping in view the need of the Society, it is necessary to bring the Parks back to their normal use in a sustained manner. We are of the view that the MCD, the NDMC and the DDA shall in a phased manner stop the granting of permission for the use of the Parks for commercial/ marriage purposes etc. The material placed on record shows that the MCD is permitted such use in 1023 Parks, the DDA in 146 Parks and the NDMC in 51 Parks. After hearing learned counsel for the parties, we direct as under:

(1) The use of Parks by the MCD, the NDMC and the DDA for the purposes mentioned above shall not be permitted more than 10 days in a month. In other words, when any of the Designated Park is used for such purposes 10 days in a month, no function thereafter shall be permitted during the remaining 20/21 days.

(2) The MCD, the DDA and the NDMC shall make endeavour to construct community halls for the purposes of marriages etc.

(3) The number of Parks indicated by the 3 authorities used for marriage etc. shall be reduced by 30% by June 30, 1997. It shall be reduced by further 20% by December 31,

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Order dated December 6, 1996 in I.A. No. 34/35 in W.P.(C) No. 4677/1985 [1997(6) SCALE (SP) 13]

1997. In other words, by the end of December 1997, the use of the Parks for marriage etc. shall be reduced by 50%. The authorities concerned shall file affidavits stating the progress in the projects for construction of community halls and also stopping the use of the Parks for marriages etc. by the end of December 1997. This may be monitored further by this Court in January 1998.

(4) We direct that no tree shall be cut from any of the Parks for any purpose, specially to facilitate the holding of these functions etc.

4. The application is disposed of.

I.A. No. 35 in W.P. (C) No. 4677/85

5. So far as the subject matter of I.A. No. 35/96 is concerned, we request Mr. Ranjit Kumar, Mr. Krishan Mahajan and Mr. Vijay Panjwani, to look into the matter, and place their comments within one week from today.

6. To come up December 13, 1996.

SCALE (PIL) 1981-97 1313

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — PUBLIC PARKS IN DELHI — Misuse of District Park — Court records the statement of Counsel for M.C.D. that they would restore the Park to its original position.

1. We requested Mr. Ranjit Kumar, Mr. Krishan Mahajan and Mr. Vijay Panjwani, Advocates of this Court, to visit Greater Kailash Part-I, District Park, under the control of the MCD. The Report indicates that the Park is being misused and not being kept for recreational purposes. Mr. Suri, learned counsel for the MCD states that they would improve and restore the Park to its original position. He further states that all encroachments etc. from the Park shall be removed. They may do so within two months from today. The Application is disposed of.

Order dated December 18, 1996 in I.A. No. 35 in W.P. (C) No. 4677/1985 [1997(6) SCALE (SP) 14]

SCALE (PIL) 1981-97 1313

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — PUBLIC PARKS IN DELHI — Use of — Following order reported in 1997(6) SCALE (SP) 13 Court orders the closure of Chief Ministers Camp Office in a public park.

Order dated December 17, 1996 in I.A. No. 34 in W.P. (C) No. 4677/85 [1997(6) SCALE (SP) 14]

Item 'B' of the Office Report Dt. 14.12.1996
I.A. No. 34.

1. This Court by the order dated December 6, 1996 directed the MCD, DDA and the NDMC not to permit the use of the public parks under their control for commercial or private use. This Court further directed that such use be stopped in a phased manner. It was brought to the notice of this Court that Musical Dancing Fountain Park, managed by the NDMC was also being used by the NCT, Delhi Administration as a Camp Office of the Chief Minister. The Office of the Chief Minister, Delhi, by the order dated October 3, 1996 permitted the use of a part of the Musical Dancing Fountain Park as a camp office for listening to the grievances of the people of South Delhi by the Chief Minister, Delhi. The order further stated that the expenditure of the camp office be charged against the funds of the Musical Fountain.

2. The NDMC by the order dated June 17, 1996 permitted the construction of the office in the said park.

3. On our request three learned counsel of this Court - Mr. Ranjit Kumar, Mr. Krishan Mahajan and Mr. Vijay Panjwani - visited the park and have placed before us their report. We are in agreement with the suggestions made by the learned counsel in their report. As stated above, we have, by the order dated December 6, 1996 prohibited the use of the public parks for any other purpose except aesthetic and recreational. In view of the said order, the musical fountain park cannot be used for office purpose.

4. Learned counsel for NDMC states that the NDMC intends to use the construction which has been made in the park for the use of the park only. We direct that the Musical Dancing Fountain Park - in totality - be used only for recreational purposes. It shall not be used for any other purpose. We are informed by the learned counsel that the Chief Minister has not held any Darbar in this camp till date. We direct the NDMC to take over the camp office premises and use it for the purposes of the park only. The gate specially constructed as an entry to the camp office be demolished and wall be constructed to enclose the area.

5. I.A. 34 is disposed of.

SCALE (PIL) 1981-97 1314

INDIAN COUNCIL OF LEGAL AID & ADVICE & ORS *Petitioners*

VS

STATE OF ORISSA & ANR. *Respondents*

CORAM: J.S. VERMA CJI, B.N. KIRPAL AND M. JAGANNADHA RAO, JJ.

PUBLIC INTEREST LITIGATION — STARVATION DEATH — STARVATION DEATHS IN THE STATE OF ORISSA — Court adjourns the matter as the same is due to be heard by the National Human Rights Commission.

1. Dr. Rajeev Dhawan, learned senior counsel for National Human Rights Commission informs us that hearing before National Human Rights Commission is fixed for 17th instant. Sh. Altaf Ahmad, the learned Additional Solicitor General states that arrangement has been made for appearance of Union of India before NHRC. List the matter after four weeks.

Order dated September 15, 1997 in W.P. (C) No. 42/97. (with Tran. Case (C) No. 9-10/97). [1997(6) SCALE (SP) 16]

SCALE (PIL) 1981-97 1315

VINEET NARAIN AND ORS. *Petitioners*

VS

U.O.I. AND ANR. *Respondents*

CORAM: J.S. VERMA, CJI AND S.P. BHARUCHA, J.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — HAWALA CASE — Appointment of New Director of C.B.I. and transfer of Mr. Joginder Singh — Filing of writ petition in Delhi High Court — Court considers it appropriate to permit the petitioners before the High Court in that Writ Petition to withdraw that Writ Petition from the Delhi High Court and to raise the additional point said to be involved in that matter by a suitable application made in this proceeding in this Court through the Amicus Curiae.

Heard on I.A. No..../97.

1. In view of the circumstances in which C.W.P. No. 2992/97 has been filed in the Delhi High Court and for the reasons given by Shri Shanti Bhushan, learned senior counsel, to justify the filing of that Writ Petition in the Delhi High Court inspite of the order dated 9.7.97 of this court in this proceeding, we consider it appropriate to permit the petitioners before the High Court in that Writ Petition to withdraw that Writ Petition from the Delhi High Court and to raise the additional point said to be involved in that matter by a suitable application made in this proceeding in this court through the Amicus Curiae. On such an application being filed through the Amicus Curiae, the respondents would file a reply to the same within a week of that application being filed.

2. Order on the I.A. accordingly.

3. List on 12.9.97 for directions.

Order dated September 11, 1997 in W.P. (Crl.) No. 340-43/93. [1997(6) SCALE (SP) 16]

SCALE (PIL) 1981-97 1315

INST. OF SOLID WASTE RESEARCH & ECOLO. BALN. *Petitioner*

VS

U.O.I. & ANR. *Respondents*

CORAM: J.S. VERMA, CJI AND S.P. BHARUCHA, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — ECOLOGICAL BALANCE — Court allows the writ petition to be withdrawn while observing that is a matter of policy for the concerned authorities in the Government to examine and decide and the remedy under Article 32 of the Constitution of India in the matter is inappropriate.

1. No doubt the question raised in this writ petition is of considerable significance in the sphere of preservation of ecology and environment and to prevent air and water pollution, but that is a matter of policy for the concerned authorities in the Government to examine and decide. In our opinion, the remedy under Article 32 of the Constitution of India in the matter is inappropriate. Learned counsel, therefore, seeks leave to withdraw the petition.

2. The writ petition is dismissed as withdrawn.

Order dated September 11, 1997 in W.P. (C) No. 431/97. 1997(6) SCALE (SP) 17]

SCALE (PIL) 1981-97 1316
RE: EMPIRE CIRCUS
M.C. MEHTA *Petitioner*
VS
UNION OF INDIA AND ORS. *Respondents*

CORAM: S.C. SEN AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — PUBLIC PARKS IN DELHI — Order reported in (1997(6) SCALE (SP) 13) — Court clarifies order regarding holding of a Circus.

1. It is clarified that the order of this Court dated 6th December, 1996 in I.A. No. 34 does not stand in the way of holding the Circus as it is usually held in the Red Fort area on the ground in which it is traditionally held. It is further made clear that the Circus authority must comply with all the statutory requirements. The I.As. are disposed of.

Order dated October 1, 1997 in I.A. No. 18 in W.P. (C) No. 4677/85. with I.A. No. 149 in I.A. No. 34 in W.P. (C) No. 4677 of 1985. [1997(6) SCALE (SP) 17]

SCALE (PIL) 1981-97 1316
INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*

CORAM: S.B. MAJMUDAR AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — STATE OF RAJASTHAN — Court issues certain directions.

I.A. No. 6 of 1996:

1. Having heard learned Advocates for the parties we find that as the claim of Rs. 18,515/- put forward by the Rajasthan Pollution Control Board in connection with taking samples arises out of a direction issued by this Court earlier, the said amount appears to be quire reasonable and should be permitted to be adjusted from the amount lying with the Rajasthan Pollution Control Board.

2. I.A. stands allowed accordingly.

I.A. No. 7 of 1996:

3. Having heard learned Advocates for the parties we find that as the claim of Rs. 1,10,311.50 put forward by the Rajasthan Pollution Control Board for the cost incurred in repairing six disposal tanks for storage of sludge arises out of a direction issued by this Court earlier, the said amount should be permitted to be adjusted from the amount lying with the Rajasthan Pollution Control Board.

4. I.A. stands allowed accordingly.

I.A. No. 11 of 1996:

5. In this I.A. the main prayer is that the State of Rajasthan may be directed to disburse Rs. 12,43,250/- to the villagers by way of interim compensation on the ground that they have suffered on account of the wrong acts of the offending industries which have been considered to be rogue industries by this Court in the decision of this Court in this very case i.e. Indian Council for Enviro-Legal Action

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Order dated September 11, 1997 in IA No. 6, 7, 11, 15-19, 21-22 in W.P. (C) No. 967/89. with I.A. No. 3 in W.P. (C) No. 76/94. [1997(6) SCALE (SP) 17]

& Ors. v. Union of India & Ors. reported in (1996) 3 SCC 212. The relevant direction issued by this Court is at page 251 which reads as under:

> "So far as the claim for damages for the loss suffered by the villagers in the affected area is concerned, it is open to them or any organisation on their behalf to institute suits in the appropriate civil court. If they file the suit or suits in forma pauperis, the State of Rajasthan shall not oppose their applications for leave to sue in forma pauperis."

6. In view of this direction, therefore, the grievance made by the petitioner in the present I.A. can well be taken care of by directing persons concerned to file appropriate suits before competent civil court in forma pauperis. The suits when filed shall be expeditiously disposed of looking to the nature of the grievance of the petitioner. It is also made clear that the suit/ suits will be expeditiously disposed of with the co-operation of the petitioner as well as the concerned defendants and if the court finds any dilatory tactics being adopted by any party it shall not be countenanced. So far as the question of drinking water facilities is concerned, learned counsel for the State of Rajasthan stated on instruction on affidavit which has been filed in this proceeding that necessary drinking water facilities are provided in the villages.

7. I.A. is disposed of accordingly.

I.A. No. 16 of 1996:

8. At the request of learned counsel for the respondent No.3 who wants to give his response to the counter filed by Respondent Nos. 4 - 8, adjourned for six weeks.

9. To be placed after six weeks on a non-miscellaneous day.

I.A. Nos. 18 of 1996:

10. I.A. is allowed.

I.A. No. 17 of 1996:

11. Learned senior counsel for the applicants states that reserving his right to file appropriate proceeding for the relief prayed for in this application, he seeks leave to withdraw this application. Leave granted. This I.A. is dismissed as withdrawn.

I.A. No. 19 of 1996:

12. Learned Addl. Solicitor General wants to withdraw this I.A. without prejudice to the rights and contentions of the Bank to take appropriate steps for recovery of the amount against the parties concerned by approaching the Debt Recovery Tribunal or any other competent forum. this I.A. therefore stands dismissed as withdrawn.

I.A. No. 21 of 1997:

13. Having heard learned counsel or the parties we deem it fit to grant permission to the applicant-State to dispose of listed 15 items in the prayer clause by open auction after fixing the off set price for sale of each of the items. Respondent Nos. 4-8 also will be at liberty to bid in the open auction.

14. So far as the listed items are concerned, Item No.14 deals with Single Super phosphate in bags (750 bags). Mr. Ramaswamy, learned senior counsel for Respondent Nos. 4-8 states that according to him, a ready buyer is available who is prepared to offer Rs. 3,300/- per metric ton for that item. The present order qua item No.14 will stand deferred for one week form today within which time the Respondent Nos. 4-8 through a buyer or otherwise may make firm offer for purchasing the goods mentioned in item No. 14 at the rate of Rs. 3,300/- per metric ton. If within one week such offer is not made available to the applicant-State then this item will also be sold by open auction along with other items pursuant to the present order.

15. I.A. is disposed of accordingly.

I.A. No. 22 of 1997:

16. Learned counsel for the respondents who are already been served with copies of the I.A. request for some time to file their response to the I.A. Four weeks' time is granted for that purpose. Two more weeks' is granted to the applicants to file their respondent to the counters of the respondents.

17. To be placed after six weeks on a non-miscellaneous day.

I.A. No. 15 of 1996:

18. To be heard along with I.A. No. 22 and adjourned accordingly.

I.A. No. 3 in W.P. (C) No. 76/94:

19. Having heard learned counsel for the parties we find that as the claim of Rs. 72,618/- put forward by the petitioner for construction of tanks arises out of a direction issued by this Court earlier. The said amount should be permitted to be adjusted form the amount lying with the Rajasthan Pollution Control Board.

20. I.A. stands allowed accordingly.

SCALE (PIL) 1981-97 1318

T.N. GODAVARMAN THIRUMULKPAD *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: B.N. KIRPAL AND M. JAGANNADHA RAO, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — FORESTS — Court directs that the matter be placed before the Bench presided over by CJI.

1. List the matter on 15.9.97 before the Bench presided over by Hon'ble the Chief Justice of India.

Order dated September 5, 1997 in I.A. No. 225/97 in W.P. (C) No. 202/95. [1997(6) SCALE (SP) 19]

SCALE (PIL) 1981-97 1318

UNION OF INDIA *Petitioner*

VS

SUSHIL KUMAR MODI & ORS. *Respondents*

CORAM: J.S. VERMA, CJI AND S.P. BHARUCHA, J.

PUBLIC INTEREST LITIGATION — CORRUPTION — FODDER SCAM — Direction given by the High Court in the order dated 29th August, 1997 pertaining to the inquiry into the manner in which the assistance of the army was sought for execution of the warrant of arrest against Sh. Lalu Yadav — Court directs that no further proceedings would be taken in the High Court in pursuance of the directions given by it in the impugned order dated 29th August, 1997, or any other matter relating to proceedings subsequent to the filing of charge-sheets in the court of the Special Judge, Patna.

1. Learned Attorney General submits that the real grievance in this petition is against the direction given by the High Court in the order dated 29th August, 1997 pertaining to the inquiry into the manner in which the assistance of the army was sought for execution of the warrant of arrest against Sh. Lalu Yadav. We find that in the special leave

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Order dated September 11, 1997 in SLP (C) No. 17144-17145/97. [1997(6) SCALE (SP) 20] petition the real grievance of the petitioner has not been brought out clearly and the specific portions of the High Court's order dated 29th August, 1997 have not been indicated against which the petitioner has the grievance. This be done by amending the petition within four days.

2. In a matter of this kind, which is a PIL matter, it is unnecessary to issue notice to all the respondents and to permit all the individuals shown as respondents (writ petitioners in the High Court) to continue as separate parties in the matter. In view of the fact that Sh. Shanti Bhushan appears for one of these respondents (respondent No. 11) and that the remaining writ petitioners/respondents have identical interest, which in substance is a matter of public interest, we do not direct issue of notice to the others.

3. We now request Sh. Shanti Bhushan to appear as amicus curiae in this matter in this Court and, therefore, none of the original writ petitioners/individual respondents in the special leave petition have any additional or distinct right of appearance in the matter. Sh. Gopal Singh is requested to assist Sh. Shanti Bhushan. We make this direction in consonance with the procedure adopted in other similar matters in this Court.

4. Issue notice only to respondent Nos. 5 to 8, and 14 to 19.

5. We also direct that no further proceedings would be taken in the High Court in pursuance of the directions given by it in the impugned order dated 29th August, 1997, or any other matter relating to proceedings subsequent to the filing of charge-sheets in the court of the Special Judge, Patna.

SCALE (PIL) 1981-97 1319

LAKSHMI KANT PANDEY *Petitioner*

VS

UNION OF INDIA *Respondent*

CORAM: P.N. BHAGWATI, R.S. PATHAK & AMARENDRA NATH SEN, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — Adoption to Foreign Parents — Procedure and Norms to be followed by Courts.

Bhagwati, J.— This writ petition has been initiated on the basis of a letter addressed by one Laxmi Kant Pandey, an advocate practising in this Court, complaining of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. The letter referred to a press report based on "empirical investigation carried out by the staff of a reputed foreign magazine" called "The Mail" and alleged that not only Indian children of tender are under the guise of adoption "exposed to the long horrendous journey to distant foreign countries at great risk to their lives but in cases where they survive and where these children are not placed in the Shelter and Relief Homes, they in course of time become beggars or prostitutes for want of proper care from their alleged foreign foster parents." The petitioner accordingly sought relief restraining Indian based private agencies "from carrying out further activity of routing children for adoption abroad" and directing the Government of India, the Indian Council of Child Welfare and the Indian Council of Social Welfare to carry out their obligations in the matter of adoption of Indian children

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Judgment dated February 6, 1984 in Writ Petition (Crl.) No. 1171 of 1982. [1984(1) SCALE 159] by foreign parents. This letter was treated as a writ petition and by an Order dated 1st September 1982 the Court issued notice to the Union of India the Indian Council of Child Welfare and the Indian Council of Social Welfare to appear in answer to the writ petition and assist the Court in laying down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents and if so, the procedure to be followed for that purpose, with the object of ensuring the welfare of the child.

2. The Indian Council of Social Welfare was the first to file its written submissions in response to the notice issued by the Court and its written submission filed on 30th September 1982 not only carried considerable useful material bearing on the question of adoption of Indian children by foreign parents but also contained various suggestions and recommendations for consideration by the Court in formulating principles and norms for permitting such adoptions and laying down the procedure for that purpose. We shall have occasion to refer to this large material placed before us as also to discuss the various suggestions and recommendations made in the written submission by the Indian Council of Social Welfare when we take up for consideration the various issues arising in the writ petition. Suffice it to state for the present that the written submission of the Indian Council of Social Welfare is a well thought out document dealing comprehensively with various aspects of the problem in its mani-fold dimensions. When the writ petition reached hearing before the Court on 12th October, 1982 the only written submission filed was that the Indian Council of Social Welfare and neither the Union of India nor the Indian Council of Child Welfare had made any response to the notice issued by the Court. But there was a telegram received from a Swedish Organisation called "Barnen Framfoer Allt Adoptioner" intimating to the Court that this Organisation desired to participate in the hearing of the writ petition and to present proper material before the Court. S.O.S. Children's Villages of India also appeared through their counsel Mrs. Urmila Kapoor and applied for being allowed to intervene at the hearing of the writ petition so that they could make their submissions on the question of adoption of Indian children by foreign parents. Since S.O.S. Children's Villages of India is admittedly an organisation concerned with welfare of children, the Court, by an Order dated 12th October 1982, allowed them to intervene and to make their submissions before the Court. The Court also by the same Order directed that the Registry may address a communication to Barnen Framfoer Allt Adoptioner informing them about the adjourned date of hearing of the writ petition and stating that if they wished to present any material and make their submissions, they could do so by filing an affidavit before the adjourned date of hearing. The Court also directed the Union of India to furnish before the next hearing of the writ petition the names of "any Indian Institutions or Organisations other than the Indian Council of Social Welfare and the Indian Council of Child Welfare, which are engaged or involved in offering Indian children for adoption by foreign parents" and observed that if the Union of India does not have this information, they should gather the requisite information so far as it is possible for them to do so and to make it available to the Court. The Court also issued a similar direction to the Indian Council of Child Welfare, Indian Council of Social Welfare and S.O.S. Children's Villages of India. There was also a further direction given in the same Order to the Union of India, the Indian Council of Child Welfare, the Indian Council of Social Welfare and the S.O.S. Children's Village of India "to supply to the Court information in regard to the names and particulars of any foreign agencies which are engaged in the work of finding Indian children for adoption for foreign parents." The writ petition was adjourned to 9th November 1982 for enabling the parties to carry out these directions.

3. It appears that the Indian Council of Social Welfare thereafter, in compliance with the directions given by the Court, filed copies of the Adoption of Children Bill 1972 and the Adoption of Children Bill 1980. The Adoption of Children Bill 1972 was introduced in the Rajya Sabha sometime in 1972 but it was subsequently dropped, presumably because of the opposition of the Muslims stemning from the fact that it was intended to provide for a uniform law of adoption applicable to all communities including the Muslims. It is a little difficult to appreciate why the Muslims should have opposed this Bill which merely empowered a Muslim to adopt if he so wished; it had no compulsive force requiring a Muslim to act contrary to his religious tenets : it was merely an enabling legislation and if a Muslim felt that it was contrary to his religion to adopt, he was free not to adopt. But in view of the rather strong sentiments expressed by the members of the Muslim Community and with a view not to offend their religious susceptibilities, the Adoption of Children Bill 1980 which was introduced in the Lok Sabha eight years later on 16th December 1980, contained an express provision that it shall not be applicable to Muslims. Apart from this change in its coverage the Adoption of Children Bill 1980 was substantially in the same terms as the Adoption of Children Bill 1972. The Adoption of Children Bill 1980 has unfortunately not yet been enacted into law but it would be useful to notice some of the relevant provisions of this Bill in so far as they indicate what principles and norms the Central Government regarded as necessary to be observed for securing the welfare of children sought to be given in adoption to foreign parents and what procedural safeguards the Central Government thought, were essential for securing this end. Clauses 23 and 24 of the Adoption of Children Bill 1980 dealt with the problem of adoption of Indian children by parents domiciled abroad and, in so far as material, they provided as follows:

> "23(1) Except under the authority of an order under section 24, it shall not be lawful for any person to take or send out of India a child who is a citizen of India to any place outside India with a view to the adoption of the child by any person.
> (2) Any person who takes or sends a child out of India to any place outside India in contravention of sub-section (1) or makes or takes part in any arrangements for transferring the care and custody of a child to any person for that purpose shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.
> 24(1) If upon an application made by a person who is not domiciled in India, the district court is satisfied that the applicant intends to adopt a child under the law of or within the country in which he is domiciled, and for that purpose desires to remove the child from India either immediately or after an interval, the court may make an order (in this section referred to as a provisional adoption order) authorising the applicant to remove the child for the purpose aforesaid and giving to the applicant the care and custody of the child pending his adoption as aforesaid:
> Provided that no application shall be entertained unless it is accompanied by a certificate by the Central Government to the effect that —
> (i) the applicant is in its opinion a fit person to adopt the child ;

(ii) the welfare and interests of the child shall be safeguarded under the law of the country of domicile of the applicant;

(iii) the applicant has made proper provision by way of deposit or bond or otherwise in accordance with the rules made under this Act to enable the child to be repatriated to India, should it become necessary for any reason.

(2) The provisions of this Act relating to an adoption order shall, as far as may be, apply in relation to a provisional adoption order made under this section.

The other clauses of the Adoption of Children Bill 1980 were sought to be made applicable in relation to a provisional adoption order by reason of sub-clause (3) of clause 24. The net effect of this provision, if the Bill were enacted into law, would be that in view of clause 17 no institution or organisation can make any arrangement for the adoption of an Indian child by foreign parents unless such institution or organisation is licensed as a social welfare institution and under Clause 21, it would be unlawful to make or to give to any person any payment or reward for or in consideration of the grant by that person of any consent required in connection with the adoption of a child or the transfer by that person of the care and custody of such child with a view to its adoption or the making by that person of any arrangements for such adoption. Moreover, in view of Clause 8, no provisional adoption order can be made in respect of an Indian child except with the consent of the parent or guardian of such child and if such child is in the care of an institution, except with the consent of the institution given on its behalf by all the persons entrusted with or in charge of its management, but the District Court can dispense with such consent if it is satisfied that the person whose consent is to be dispensed with has abandoned, neglected or persistently ill-treated the child or has persistently failed a without reasonable cause to discharge his obligation as parent or guardian or can not be found or is incapable of giving consent or is withholding consent un-reasonably. When a provisional adoption order is made by the District Court on the application of a person domiciled abroad, such person would be entitled to obtain the care and custody of the child in respect of which the order is made and to remove such child for the purpose of adopting it under the law or within the country in which he is domiciled. These provisions in the Adoption of Children Bill 1980 will have to be borne in mind when we formulate the guidelines which must be observed in permitting an Indian child to be given in adoption to foreign parents. Besides filing copies of the Adoption of Children Bill 1972 and the Adoption of Children Bill 1980, the Indian Council of Social Welfare also filed two lists, one list giving names and particulars of recognised agencies in foreign countries engaged in facilitating procurement of children from other countries for adoption in their own respective countries and the other list containing names and particulars of institutions and organisations in India engaged in the work of offering and placing Indian children for adoption by foreign parents.

4. The Writ Petition thereafter came up for hearing on 9th November 1982 when several applications were made by various institutions and organisations for intervention at the hearing of the writ petition. Since the questions arising in the writ petition were of national importance, the Court thought that it would be desirable to have assistance from whatever legitimate source it might come and accordingly, by an order dated 9th November 1982, the Court granted permission to eight specified institutions or organisations to file affidavits or statements placing relevant material before the Court in regard to the question of adoption of Indian children by foreign parents and directed that such affidavits or statements should be filled on or before 27th November 1982. The Court also issued notice of the writ petition to the State of West Bengal directing it to file its affidavit or statement on or before the same date. The Court also directed the Superintendent of Tees Hazari courts to produce at the next hearing of the writ petition quarterly reports in regard to the orders made under the Guardian and Wards Act 1890 entrusting care and custody of Indian children to foreign parents during the period of five years immediately prior to 1st October 1982. Since the Union of India had not yet filed its affidavit or statement setting out what was the attitude adopted by it in regard to this question, the Court directed the Union of India to file its affidavit or statement within the same time as the others. The Court then adjourned the hearing of the writ petition to 1st December 1982 in order that the record may be completed by that time.

5. Pursuant to these directions given by the Court, various affidavits and statements were filed on behalf of the Indian Council of Social Welfare, Enfants Du Monde, Missionaries of Charity, Enfants De L's Espoir, Indian Association for Promotion of Adoption, Kuan-yin Chhritable Trust, Terre Des Homes (India) Society, Maharashtra State Women's Council, Legal Aid Services West Bengal, SOS Children's Villages of India, Bhavishya International Union for Child Welfare and the Union of India. These affidavits and statements placed before the Court a wealth of material bearing upon the question of adoption of Indian children by foreign parents and made valuable suggestions and recommendations for the consideration of the Court. These affidavits and statements were supplemented by elaborate oral arguments which explored every facet of the question, involving not only legal but also sociological considerations. We are indeed grateful to the various participants in this inquiry and to their counsel for the very able assistance rendered by them in helping us to formulate principles and norms which should be observed in giving Indian children in adoption to foreign parents and the procedure that should be followed for the purpose of ensuring that such inter-country adoptions do not lead to abuse maltreatment or exploitation of children and secure to them a healthy, decent family life.

6. It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well being of its children. Children are a "supremely important national asset" and the future well being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said: "Child shows the man as morning shows the day" and the Study Team on Social Welfare said much to the same effect when it observed that "the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages." The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fulness of physical and vital energy and the utmost breadth, depth and height of its emotional, inteliectual and spiritual being; otherwise there cannot be a healthy growth of the nation. Now obviously children need special protection because of their tender age and physique mental immaturity and incapacity to look-after themselves. That is why there is a growing realisation in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realisation of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process. In India this consciousness is reflected in the provisions enacted in the Constitution. Clause (3) of Article 15 enables the State to make special provisions *inter alia* for children and Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clause (e) and (f) of Article 39 provide that the State shall direct its policy towards securing *inter alia* that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented preambulatory introduction :

> "The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice."

The National Policy sets out the measures which the Government of Indian proposes to adopt towards attainment of the objective set out in the preambulatory introduction and they include measures designed to protect children against neglect, and cruelty and exploitation and to strengthen family ties "so that full potentialities of growth of children are realised within the normal family neighbourhood and community environment." The National Policy also lays down priority in programme formation and it gives fairly high priority to maintenance, education and training of orphan and destitute children. There is also provision made in the National Policy for constitution of a National Children's Board and pursuant to this provision, the Government of India has constituted the National Children's Board with the Prime Minister as the chair person. It is the function of the National Children's Board to provide a focus for planning and review and proper coordination of the multiplicity of services striving to meet the needs of children and to ensure at different levels continuous planning, review and coordination of all the essential services. The National Policy also stresses the vital role which the voluntary organisations have to play in the field of education, health, recreation and social welfare services for children and declares that it shall be the endeavour of State to encourage and strengthen such voluntary organisations.

7. There has been equally great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child adopted by the General

Assembly of the United Nations on 20th November 1959. The Declaration in its Preamble points out that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", and that "mankind owes to the child the best it has to give" and proceeds to formulate several Principles of which the following are material for our present purpose :

> "PRINCIPLE 2 : The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration."
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> PRINCIPLE 3: The child shall be entitled from his birth to a name and a nationality.
>
> PRINCIPLE 6: The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.
>
> PRINCIPLE 9: The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.
>
> PRINCIPLE 10 : The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men."

Every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family of his biological parents. But if for any reason it is not possible for the biological parents or other near relative to look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative would be to find adoptive parents for the child so that the child can grow up under the loving care and attention of the adoptive parents. The adoptive would be the next best substitute for the biological parents. The practice of adoption has been prevalent in Hindu Society for centuries and it is recognised by Hindu Law, but in a large number of other countries it is of comparatively recent origin while in the muslim countries it is totally unknown. Amongst Hindus, it is not merely ancient Hindu Law which recognises the practice of adoption but it has also been legislatively recognised in the Hindu Adoption and Maintenance Act 1956. The Adoption of Children Bill 1972 sought to provide for a uniform law of adoption applicable to all communities including the muslim but, as pointed out above, it was dropped owing to the strong opposition of the muslim community. The Adoption of Children Bill 1980 is now pending in Parliament and if enacted, it will provide a uniform law of adoption applicable to all communities in India excluding the muslim community. Now when the parents of a child want to give it away in adoption or the child is abandoned and it is considered necessary in the interest of the child to give it in adoption, every effort must be made first to find adoptive parents for it within the country, because such adoption would steer clear of any problems of assimilation of the child in the family of the adoptive parents which might arise on account of cultural, racial or linguistic differences in a case of adoption of the child by foreign parents. If it is not possible to find suitable adoptive parents for the child within the country, it may become necessary to give the child in adoption to foreign parents rather than allow the child to grow up in an orphanage or an institution where it will have no family life and no love and affection of parents and quite often, in the socio-economic conditions prevailing in the country, it might have to lead the life of a destitute, half clad, half-hungry and suffering from mal-nutrition and illness. Paul Harrison a free-lance journalist working for several U.N. Agencies including the International Year of the Child Secretariate points out that most third world children suffer "because of their country's lack of resources for development as well as pronounced inequalities in the way available resources are distributed", and they face a situation of absolute material deprivation. He proceeds to say that for quite a large number of children in the rural areas, "poverty and lack of education of their parents, combined with little or no access to essential services of health, sanitation and education, prevent the realisation of their full human potential making them more likely to grow up uneducated, unskilled and unproductive" and their life is blighted by malnutrition, lack of health care and disease and illness caused by starvation, impure water and poor sanitation. What Paul Harrison has said about children of the third world applies to children in India and if it is not possible to provide to them in India decent family life where they can grow up under the loving care and attention of parents and enjoy the basic necessities of life such as nutritive food, health care and education and lead a life of basic human dignity with stability and security, moral as well as material, there is no reason why such children should not be allowed to be given in adoption to foreign parents. Such adoption would be quite consistent with our National Policy on Children because it would provide an opportunity to children, otherwise destitute, neglected or abandoned, to lead a healthy decent life, without privation and suffering arising from poverty, ignorance, mal-nutrition and lack of sanitation and free from neglect and exploitation, where they would be able to realise "full potential of growth". But of course as we said above, every effort must be made first to see if the child can be rehabilitated by adoption within the country and if that is not possible, then only adoption by foreign parents, or as it is some time called `inter country adoption' should be acceptable. This principle stems from the fact that inter country adoption may involve trans-racial, trans-cultural and transnational aspects which would not arise in case of adoption within the country and the first alternative should therefore always be to find adoptive parents for the child within the country. In fact, the Draft Guidelines of Procedures Concerning Inter-Country Adoption formulated at the International Council of Social Welfare Regional Conference of Asia and Western Pacific held in Bombay in 1981 and approved at the Workshop on Inter Country Adoption held in Brighton, U.K. on 4th September, 1982, recognise the validity of this principle in clause 3.1 which provides: "Before any plans are considered for a child to be adopted by a foreigner, the appropriate authority or agency shall consider all alternatives for permanent family care within the child's own country". Where, however, it is not possible to find placement for the child in an adoptive family within the country, we do not see anything wrong if a home is provided to the child with an adoptive family in a foreign country. The Government of India also in the affidavit filed on its behalf by Miss B. Sennapati Programme Officer in the Ministry of Social Welfare seems to approve of inter-country adoption for Indian children and the proceedings of the Workshop on Inter-Country Adoption held in Brighton, U.K. on 4th September 1982 clearly show that the Joint Secretary, Ministry of Social Welfare who represented the Government of India at the Workshop "affirmed support of the Indian Government to the efforts of the international organisations in promoting measures to protect welfare and interests of children who are adopted abroad."

8. But while supporting inter-country adoption, it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research and may be placed in a worse situation than that in his own country. The Economic and Social Council as also the Commission for Social Development have therefore tried to evolve social and legal principles for the protection and welfare of children given in inter-country adoption. The Economic and Social Council by its Resolution 1925 LVIII requested the Secretary General of the United Nations to convene a group of Experts with relevant experience of family and child welfare with the following mandate :

> "a. To prepare a draft declaration of social and legal principles relating to adoption and foster placement of children nationally and internationally, and to review and appraise the recommendations and guidelines incorporated in the report of the Secretary General and the relevant material submitted by Governments already available to the Secretary General and the regional commissions.
>
> b. To draft guidelines for the use of Governments in the implementation of the above principles, as well as suggestions for improving procedures within the context of their social development—including family and child welfare-programmes."

Pursuant to this mandate an Expert Group meeting was convened in Geneva in December 1978 and this Expert Group adopted a "Draft declaration on social and legal principles relating to the protection and welfare of children with special reference of foster placement and adoption, nationally and internationally". The Commission for Social Development considered the draft Declaration at its 26th Session and expressed agreement with its contents and the Economic and Social Council approved the draft Declaration and requested the General Assembly to consider it in a suitable manner. None of the parties appearing could give us information whether any action has been taken by the General Assembly. But the draft Declaration is a very important document in as much it lays down certain social and legal principles which must be observed in case of inter-country adoption. Some of the relevant principles set out in the draft Declaration may be referred to with advantage :

> "Art. 2. It is recognized that the best child welfare is good family welfare.
>
> 4. When biological family care is

unavailable or inappropriate, substitute family care should be considered.

7. Every child has a right to a family. Children who cannot remain in their biological family should be placed in foster family or adoption in preference to institutions, unless the child's particular needs can best be met in a specialized facility.

8. Children for whom institutional care was formerly regarded as the only option should be placed with families, both foster and adoptive.

12. The primary purpose of adoption is to provide a permanent family for a child who cannot be cared for by his/her biological family.

14. In considering possible adoption placements, those responsible for the child should select the most appropriate environment for the particular child concerned.

15. Sufficient time and adequate counselling should be given to the biological parents to enable them to reach a decision on their child's future, recognizing that it is in the child's best interest to reach this decision as early as possible.

16. Legislation and services should ensure that the Child becomes an integral part of the adoptive family.

17. The need of adult adoptees to know about their background should be recognized.

19. Government should determine the adequacy of their national services for children, and recognize those children whose needs are not being met by existing services. For some of these children inter-country adoption may be considered as a suitable means of providing them with a family.

21. In each country, placements should be made through authorized agencies competent to deal with inter-country adoption services and providing the same safeguards and standards as are applied in national adoptions.

22. Proxy adoptions are not acceptable, in consideration of the child's legal and social safety.

23. No adoption plan should be considered before it has been established that the child is legally free for adoption and the pertinent documents necessary to complete the adoption are available. All necessary consents must be in a form which is legally valid in both countries. It must be definitely established that the child will be able to immigrate into the country of the prospective adopters and can subsequently obtain their nationality.

24. In inter country adoptions, legal validation of the adoption should be assured in the countries involved.

25. The child should at all times have a name, nationality and legal guardian."

Thereafter at the Regional Conference of Asia and Western Pacific held by the International Council on Social Welfare in Bombay in 1981, draft guidelines of procedure concerning inter-country adoption were formulated and, as pointed out above, they were approved at the Workshop held in Brighton, U.K. on 4th September 1982. These guidelines were based on the Draft Declaration and they are extremely relevant as they reflect the almost unanimous thinking of participants from various countries who took part in the Regional Conference in Bombay and in the Workshop in Brighton, U.K. There are quite a few of these guidelines which are important and which deserve serious consideration by us :

"1.4. In all inter-country adoption arrangements, the welfare of the child shall be prime consideration.

Biological Parents :

2.2. When the biological parents are

known they shall be offered social work services by professionally qualified workers (or experienced personnel who are supervised by such qualified workers) before and after the birth of the child.

2.3. These services shall assist the parents to consider all the alternatives for the child's future. Parents shall not be subject to any duress in making a decision about adoption. No commitment to an adoption plan shall be permitted before the birth of the child. After allowing parents a reasonable time to reconsider any decision to relinquish a child for adoption, the decision should become irrevocable.

2.5. If the parents decide to relinquish the child for adoption they shall be helped to understand all the implications, including the possibility of adoption by foreigners and of no further contact with the child.

2.6. Parents should be encouraged, where possible, to provide information about the child's background and development, and their own health.

2.8. It is the responsibility of the appropriate authority or agency to ensure that when the parents relinquish a child for adoption all of the legal requirements are met.

2.9. If the parents state a preference for the religious up-bringing of the child, these wishes shall be respected as far as possible, but the best interest of the child will be the paramount consideration.

2.10. If the parents are not known, the appropriate authority or agency, in whose care the child has been placed, shall endeavour to trace the parents and ensure that the above services are provided, before taking any action in relation to adoption of the child.

The Child:

3.1. Before any plans are considered for a child to be adopted by foreigners, the appropriate authority or agency shall consider all alternatives for permanent family care within the child's own country.

3.2. A child-study report shall be prepared by professional workers (or experienced personnel who are supervised by such qualified workers) of an appropriate authority or agency, to provide information which will form a basis for the selection of prospective adopters for the child, assist with the child's need to know about his original family at the appropriate time, and help the adoptive parents understand the child and have relevant information about him/her.

3.3. As far as possible, the child-study report shall include the following :

3.3.1. Identifying information, supported where possible by documents.

3.3.2. Information about original parents, including their health and details of the mother's pregnancy and the birth.

3.3.3. Physical, intellectual and emotional development.

3.3.4. Health report.

3.3.5. Recent Photograph.

3.3.6. Present environment— category of care (Own home, foster home, institution, etc.) relationships, routines and habits.

3.3.7. Social Worker's assessment and reasons for suggesting inter-country adoption.

3.4. Brothers and sisters and other children who have been cared for as siblings should not be separated by adoption placement except for special reasons.

3.5. When a decision about an adoption placement is finalised, adequate time and effort shall be given to preparation of the child in a manner appropriate to his/her age and level of development.

Information about the child's new country and new home, and counselling shall be provided by a skilled worker.

3.5(a) Before any adoption placement is finalized the child concerned shall be consulted in a manner appropriate to his/her age and level of development.

3.6. When older children are placed for adoption, the adoptive parents should be encouraged to come to the child's country of origin, to meet him/her there, learn personally about his/her first environment and escort the child to its new home.

Adoptive Parents:

4.3. In addition to the usual capacity for adoptive, parenthood, applicants need to have the capacity to handle the transracial, trans-cultural and trans-national aspects of inter-country adoptions.

4.4. A family study report shall be prepared by professional worker (or experienced personnel who are supervised by such qualified workers) to indicate the basis on which the applicants were accepted as prospective adopters. It should include an assessment of the parents' capacity to parent a particular type of child and provide relevant information for other authorities such as Courts.

4.5. The report on the family study, which must be made in the community where the applicants are residing, shall include details of the following :

4.5.1. Identifying information about parents and other members of the family, including any necessary documentation.

4.5.2. Emotional and intellectual capacities of prospective adopters, and their motivation to adoption.

4.5.3. Relationship (marital, family, relatives, friends, community)

4.5.4. Health.

4.5.5. Accommodation and financial position.

4.5.6. Employment and other interests.

4.5.7. Religious affiliations and/or attitudes.

4.5.8. Capacity for adoptive parenthood, and details of child preferred (Age, sex, degree of disability).

4.5.9. Support available from relatives, friends, community.

4.5.10. Social worker's assessment and details of adoption authority's approval.

4.5.11. Recent photograph of family.

Adoption Authorities and Agencies:

5.1. Inter-country adoption arrangements should be made only through Government adoption authorities (or agencies recognised by them) in both sending and receiving countries. They shall use experienced staff with professional social work education or experienced personnel supervised by such qualified workers.

5.2. The appropriate authority or agency in the child's country should be informed of all proposed inter-country adoptions and have the opportunity to satisfy itself that all alternatives in the country have been considered, and that inter-country adoption is the optimal choice of care for the child.

5.3: Before any inter-country adoption plan is considered, the appropriate authority or agency in the child's country should be responsible for establishing that the child is legally free for adoption, and that the necessary documentation is legally valid in both countries.

5.4: Approval of inter-country adoption applicants is a responsibility of the appropriate authorities or agencies in both sending and receiving countries. An application to adopt a child shall not be considered by a sending country unless it is forwarded through the appropriate authority or agency in the receiving country.

5.5: The appropriate authority or agency in both countries shall monitor the reimbursement of costs involved in inter-country adoption to prevent profiteering and trafficking in children.

5.6: xx xx xx

5.7: When child goes to another country to be adopted, the appropriate authority or agency of the receiving country shall accept responsibility for supervision of the placement, and for the provision of progress reports for the adoption authority or agency in the sending country for the period agreed upon.

5.8: In cases where the adoption is not to be finalised in the sending country, the adoption authority in the receiving country shall ensure that an adoption order is sought as soon as possible but not later than 2 years after placement. It is the responsibility of the appropriate authority or agency in the receiving country to inform the appropriate authority or agency in the sending country, of the details of the adoption order when it is granted.

5.8.1: In cases where the adoption is to be finalised in the sending country after placement, it is the responsibility of the appropriate authority or agency in both the sending and receiving country to ensure that the adoption is finalised as soon as possible.

5.9: If the placement is disrupted before the adoption is finalised, the adoption authority in the receiving country shall be responsible for ensuring, with the agreement of the adoption authority in the sending country that a satisfactory alternative placement is made with prospective adoptive parents who are approved by the adoption authorities of both countries.

Adoption Services and Communities :

6.1: Appropriate authorities or agencies in receiving countries shall ensure that there is adequate feedback to the appropriate authorities or agencies in sending countries, both in relation to inter-country adoption generally and to individual children where required.

6.2: xx xxx

6.3: The appropriate authorities and agencies in both sending and receiving countries have a responsibility for public education in relation to inter-country adoption, to ensure that when such adoption is appropriate for children, public attitudes support this. Where public attitude is known to be discriminatory or likely to be hostile on grounds of race or colour, the appropriate authority or agency in the sending country should not consider placement of the child.

Status of the Child:

7.1: *Family*—It is essential that in inter-country adoption child is given the same legal status and rights of inheritance, as is she/he had been born to the adoptive parents in marriage.

7.2: *Name*

When the legal adoption process is concluded the child shall have the equivalent of a birth registration certificate.

7.3: *Nationality*

When the legal adoption is concluded, the child shall be granted appropriate citizenship.

7.4: xx xx

7.5: *Immigration*

Before an inter-country adoption placement with particular prospective adopters is proposed, the appropriate authority or agency in the child's country shall ensure that there is no hindrance to the child entering the prospective adopters' country, and that travel documents can be obtained at the appropriate time.

We shall examine these provisions of the Draft Declaration and the draft guidelines of procedure when we proceed to consider and lay down the principles and norms which should be followed in inter-country adoption.

9. Now it would be convient at this stage to set out the procedure which is at present being followed for giving a child in adoption to foreign parents. Since there is no statutory enactment in our country providing for adoption of a child by foreign parents or laying down the procedure which must be followed in such a case, resort is had to the provisions of the Guardians & Wards Act 1890 for the purpose of facilitating such adoption. This Act is an old statute enacted for the purpose of providing for appointment of guardian of the person or property of a miner. Section 4 sub section (5) clause (a) defines the "Court" to mean the district court having jurisdiction to entertain an application under the Act for an order appointing or declaring a person to be a guardian and the expression "district court" is defined in sub-section (4) of section 4 to have the same meaning as assigned to it in the Code of Civil Procedure and includes a High Court in the exercise of its ordinary original civil jurisdiction. Section 7 sub-section (1) provides that where the court is satisfied that it for the welfare of a minor that an order should be made appointing a guardian of his person or property or both or declaring a person to be such a guardian, the court may make an order accordingly and, according to section 8, such an order shall not be made except on the application of one of for categories of person specified in clauses (a) to (d), one of them being "the person desirous of being the guardian of the minor" and the other being "any relative or friend of the minor". Sub-section (1) of section 9 declares that if the `application' is with respect to the guardianship of the person of the minor — and that is the kind of application which is availed of for the purpose of inter-country adoption— it shall be made to the district court having jurisdiction in the place where the minor ordinarily resides. Then follows section 11, sub-section (1) which prescribes that if the court is satisfied that there is ground for proceeding on the application, it shall fix a date for the hearing thereof and cause notice of the application and of the date fixed for the hearing to be served on the parents of the minor if they are residing in any State to which the Act extends, the person if any named in the petition as having the custody or possession of the person of the minor, the person proposed in the application to be appointed guardian and any other person to whom, in the opinion of the court, speciall notice of the application should be given. Section 17 provides that in appointing guardian of a minor, the court shall be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor and in considering what will be for the welfare of the minor, the court shall have regard to the age, sex, and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent and any existing or previous relations of the proposed guardian with the minor or his property. The last material section is section 26 which provides that a guardian of the person of a minor appointed by the cour shall not, without the leave of the court by which he was appointed, remove the ward from the limits of its jurisdiction, except fo such purposes as may be prescribed and th leave to be granted by the court may be specia or general. These are the relevant provision of the Guardians and Wards Act 1890 whic have a bearing on the procedure which is a present being followed for the purpose of carrying through inter-country adoption. The foreign parent makes an application to the court for being appointed guardian of the child whom he wishes to take in adoption and for leave of the court to take the child with him to his country on being appointed such guardian. The procedure to be followed by the court in disposing of such application is laid down by three High Courts in the country with a view to protecting the interest and safeguarding the welfare of the child, but so far as the rest of the High Courts are concerned, they do not seem to have taken any steps so far in that direction. Since most of the applications by foreign parents wishing to take a child in adoption in the State of Maharashtra are made on the original side of the High Court of Bombay that High Court has issued a notification dated 10th May 1972 incorporating Rule 361-B in Chapter XX of the Rules of the High Court of Bombay (Original Side) 1957 and this newly added Rule provides *inter alia* as follows:

> "When a foreigner makes an application for being appointed as the guardian of the person or property of a minor, the Prothonotary and Senior Master shall address a letter to the Secretary of the Indian Council of Social Welfare, informing him of the presentation of the application and the date fixed for the hearing thereof. He shall also inform him that any representation which the Indian Council of Social Welfare may make in the matter would be considered by the Court before passing the order on the application. A copy of the application shall be forwarded to the Secretary of the Indian Council of Social Welfare alongwith the letter of Prothonotary and Senior Master."

The High Court of Delhi has also issued instructions on the same lines to the Courts subordinate to it and these instructions read as follows:

> i) A foreigner desirous of being appointed guardian or the person of a minor and praying for leave to remove the minor to a foreign country, shall make an application for the purpose in the prescribed form under the Guardians and Wards Act, attaching with it three copies of passport size photographs of the minor, duly attested by the person having custody of the minor at the time;
>
> ii) If the court is satisfied that there is no ground for proceedings on the application, it shall fix a day for the hearing thereof and cause notice of the application and of the date fixed for the hearing on the person and in the manner mentioned in Section 11, Guardians and Wards Act, 1890 as also to the general public and the Secretary of the Indian Council of Child Welfare and consider their representation;
>
> iii) Every person appointed guardian of the person of a minor shall execute a bond with or without a surety or sureties as the court may think fit to direct and in such sum as the court may fix, having regard to the welfare of the minor and to ensure his production in the court if and when so required by the court;
>
> iv) On the court making an order for the appointment of a foreigner guardian of the person of an Indian minor, a copy of the minor's photograph shall be counter-signed by the Court and issued to the guardian or joint guardian, as the case may be, appointed by the court alongwith the certificate or guardianship."

The High Court of Gujarat has not framed any specific rule for this purpose like the High Courts of Bombay and Delhi but in a judgment delivered in 1982 in the case of *Rasiklal Chaganlal Mehta,* [AIR 1982 GUJARAT 193], the High Court of Gujarat has made the following observations:

> "In order that the Courts can satisfactorily decide an intercountry adoption case against the aforesaid background and in the light of the above referred guidelines, we consider it necessary to give certain directions. In all such cases, the Court should issue notice to the Indian Council of Social Welfare (175, Dadabhai Naroji Road, Bombay-400001) and seek its assistance. If the Indian Council of Social Welfare so desires, it should be made a party to the proceedings. If the Indian Council of Social Welfare does not appear, or if it is unable, for some reason, to render assistance, the Court should issue notice to an independent, reputed and publicly/officially recognised social welfare agency working in the field and in that area and request it to render assistance in the matter."

The object of giving notice to the Indian Council of Social Welfare or the Indian Council for Child Welfare or any other independent, reputed and publicly or officially recognised social welfare agency is obviously to ensure that the application of foreign parents for guardianship of the child with a view to its eventual adoption is properly and carefully scrutinised and evaluated by an expert body having experience in the area of child welfare with a view to assisting the Court in coming to the conclusion whether it will be in the interest of the child, promotive of its welfare, to be adopted by the foreign parents making the application or in other words, whether such adoption will provide moral and material security to the child with an opportunity to grow into the full stature of its personality in an atmosphere of love and affection and warmth of a family hearth and home. This procedure which has been evolved by the High Courts of Bombay, Delhi and Gujarat is, in our opinion, eminently desirable and it can help considerably to reduce, if not eliminate, the possibility of the child being adopted by unsuitable or undesirable parents or being placed in a family where it may be neglected, maltreated or exploited by the adoptive parents. We would strongly commend this procedure for acceptance by every court in the country which has to deal with an application by a foreign parent for appointment of himself as guardian of a child with a view to its eventual adoption. We shall discuss this matter a little more in detail when we proceed to consider what principles and norms should be laid down for inter-country adoption, but, in the meanwhile, proceeding further with the narration of the procedure followed by the courts in Bombay, Delhi and Gujarat, we may point out that when notice is issued by the court, the Indian Council of Social Welfare or the Indian Council for Child Welfare or any other recognised social welfare agency to which notice is issued, prepares what may conveniently be described as a child study report and submits it to the Court for its consideration. What are the different aspects relating to the child in respect of which the child study report should give information is a matter which we shall presently discuss, but suffice it to state for the time being that the child study report should contain legal and social data in regard to the child as also an assessment of its behavioural pattern and its intellectual, emotional and physical development. The Indian Council of Social Welfare has evolved a standardised form of the child study report and it has been annexed as Ex. 'C' to the reply filed in answer to the notice issued by the Court. Ordinarily an adoption proposal from a foreign parent is sponsored by a social or child welfare agency recognised or licensed by the Government of the country in which the foreign parent resides and the application of the foreign parent for appointment as guardian of the child is accompanied by a home study report prepared by such social or child welfare agency. The home-study report prepared by such social or child welfare agency. The home-study report contains an assessment of the fitness and suitability of the foreign parent for taking the child in adoption based on his antecedents, family background, financial condition, psychological and emotional adaptability and the capacity to look after the child after adoption despite racial, national and cultural differences. The Indian Council of Social Welfare has set out in annexure 'B' to the reply filed by it, guidelines for the preparation of the home study report in regard to the foreign parent wishing to take a child in adoption, and it is obvious from these guidelines which we shall discuss a little later, that the home study report is intended to provide social and legal facts in regard to the foreign parent with a view to assisting the court in arriving at a proper determination of the question whether it will be in the interest of the child to be given in adoption to such foreign parent. The court thus has in most cases where an application is made by a foreign parent for being appointed guardian of a child in the courts in Bombay, Delhi and Gujarat, the child study report as well as the home study report together with other relevant material in order to enable it to decide whether it will be for the welfare of the child to be allowed to be adopted by the foreign parent and if on a consideration of these reports and material, the court comes to the conclusion that it will be for the welfare of the child, the court makes an order appointing the foreign parent as guardian of the child with liberty to him to take the child to his own country with a view to its eventual adoption. Since adoption in a foreign country is bound to take some time and till then the child would continue to be under the guardianship of the foreign parent by virtue of the order made by the court, the foreign parent as guardian would continue to be accountable to the court for the welfare of the child and the court therefore takes a bond from him with or without surety or sureties in such sum as may be thought fit for ensuring its production if and when required by the court. The foreign parent then takes the child to his own country either personally or through an escort and the child is then adopted by the foreign parent according to the law of his country and on such adoption, the child acquires the same status as a natural born child with the same rights of inheritance and succession as also the same nationality as the foreign parent adopting it. This is broadly the procedure which is followed in the courts in Bombay, Delhi and Gujarat and there can be no doubt that, by and large, this procedure tends to ensure the welfare of the child, but even so, there are several aspects of procedure and detail which need to be considered in order to make sure that the child is placed in the right family where it will be able to grow into full maturity of its personality with moral and material security and in an atmosphere of love and warmth and it would not be subjected to neglect, mal-treatment or exploitation.

10. Now one thing is certain that in the absence of a law providing for adoption of an Indian child by a foreign parent, the only way in which such adoption can be effectuated is by making it in accordance with the law of the country in which the foreign parent resides. But in order to enable such adoption to be made in the country of the foreign parent, it would be necessary for the foreign parent to take the child to his own country where the procedure for making the adoption in accordance with the law of that country can be followed. However, the child which is an Indian national cannot be allowed to be removed out of India by the foreign parent unless the foreign parent is appointed guardian of the person of the child by the Court and is permitted by the Court to take the child to his own country under the provisions of the Guardians and Wards Act 1890. Today, therefore, as the law stands, the only way in which a foreign parent can take an Indian child in adoption is by making an application to the Court in which the child ordinarily resides for being appointed guardian of the person of the child with leave to remove the child out of India and take it to his own country for the purpose of adopting it in accordance with the law of his country. We are definitely of the view that such inter-country adoption should be permitted after exhausting the possibility of adoption within the country by Indian parents. It has been the experience of a large number of social welfare agencies working in the area of adoption that, by and large, Indian parents are not enthusiastic about taking a stranger child in adoption and even if they decide to take such child in adoption, they prefer to adopt a boy rather than a girl and they are wholly averse to adopting a handicapped child, with the result that the majority of abandoned, destitute or orphan girls and handicapped children have very little possibility of finding adoptive parents within the country and their future lies only in adoption by foreign parents. But at the same time it is necessary to bear in mind that by reason of the unavailability of children in the developed countries for adoption, there is a great demand for adoption of children from India and consequently there is increasing danger of ill-equipped and sometimes even undesirable organisations or individuals activising themselves in the field of inter-country adoption, with a view to trafficking in children and sometimes it may also happen that the immediate prospect of transporting the child from neglect and abandonment to material comfort and security by placing it with a foreigner may lead to other relevant factors such as the intangible needs of the child,, its emotional and psychological requirements and possible difficulty of its assimilation and integration in a foreign family with a different racial and cultural background, being under-emphasized, if not ignored. It is therefore necessary to evolve normative and procedural safeguards for ensuring that the child goes into the right family which would provide it warmth and affection of family life and help it to grow and develop physically, emotionally, intellectually and spiritually. These safeguards we now proceed to examine.

11. We may make it clear at the outset that we are not concerned here with cases of adoption of children living with their biological parents for in such class of cases, the biological parents would be the best persons to decide whether to give their child in adoption to foreign parents. It is only in these cases where the children sought to be taken in adoption are destitute or abandoned and are living in social or child welfare centres that it is necessary to consider what normative and procedural safeguards should be forged for protecting their interest and promoting their welfare.

12. Let us first consider what are the requirements which should be insisted upon so far as a foreigner wishing to take a child in adoption is concerned. In the first place, every application from a foreigner desiring to adopt a child must be sponsored by a social or child welfare agency recognised or licensed by the government of the country in which the foreigner is resident. No application by a foreigner for taking a child in adoption should be entertained directly by any social or welfare agency in India working in the area of inter-country adoption or by any institution or centre or home to which children are committed by the juvenile court. This is essential primarily for three reasons.

13. Firstly, it will help to reduce, if not eliminate altogether, the possibility of profiteering and trafficking in children, because if a foreigner were allowed to contact directly agencies or individuals in India for the purpose of obtaining a child in adoption, he might, in his anxiety to secure a child for adoption, be induced or persuaded to pay any unconscionable or unreasonable amount which might be demanded by the agency or individual procuring the child. Secondly it would be almost impossible for the court to satisfy itself that the foreigner who wishes to take the child in adoption would be suitable as a parent for the child and whether he would be able to provide a stable and secure family life to the child and would be able to handle trans-racial, trans-cultural and trans-national problems likely to arise from such adoption, because, where the application for adopting a child has not been sponsored by a social or child welfare agency in the country of the foreigner, there would be no proper and satisfactory home study report on which the court can rely. Thirdly, in such a case, where the application of a foreigner for taking a child in adoption is made directly without the intervention of a social or child welfare agency, there would be no authority or agency in the country of the foreigner who could be made responsible for supervising the progress of the child and ensuring that the child is adopted at the earliest in accordance with law and grows up in an atmosphere of warmth and affection with moral and material security assured to it. The record shows that in every foreign country where children from India are taken in adoption, there are social and child welfare agencies licensed or recognised by the government and it would not therefore cause any difficulty, hardship or inconvenience if it is insisted that every application from a foreigner for taking a child in adoption must be sponsored by a social or child welfare agency licensed or recognised by the government of the country in which the foreigner resides. It is not necessary that there should be only one social or child welfare agency in the foreign country through which an application for adoption of a child may be routed; there may be more than one such social or child welfare agencies, but every such social or child welfare agency must be licensed or recognised by the government of the foreign country and the court should not make an order for appointment of a foreigner as guardian unless it is satisfied that the application of the foreigner for adopting a child has been sponsored by such social or child welfare agency. The social or child welfare agency which sponsors the application for taking a child in adoption must get a home study report prepared by a professional worker indicating the basis on which the application of the foreigner for adopting a child has been sponsored by it. The home study report should broadly include information in regard to the various matters set out in Annexure 'A' to this judgment though it need not strictly adhere to the requirements of that Annexure and it should also contain an assessment by the social or child welfare agency as to whether the foreigner wishing to take a child in adoption is fit and suitable and has the capacity to parent a child coming from a different racial and cultural milieu and whether the child will be able to fit into the environment of the adoptive family and the community in which it lives. Every application of a foreigner for taking a child in adoption must be accompanied by a home study report and the social or child welfare agency sponsoring such application should also send along with it a recent photograph of the family, a marriage certificate of the foreigner and his or her spouse as also a declaration concerning their health together with a certificate regarding their medical fitness duly certified by a medical doctor, a declaration regarding their financial status alongwith supporting documents including employer's certificate where applicable, income-tax assessment orders, bank references and particulars concerning the properties owned by them, and also a declaration stating that they are willing to be appointed guardian of the child and undertaking that they would adopt the child according to the law of their country within a period of not more than two years from the time of arrival of the child in their country and give intimation of such adoption to the court appointing them as guardian as also to the social or child welfare agency in India processing their case, they would maintain the child and provide it necessary education and up-bringing according to their status and they would also send to the court as also to the social or child welfare agency in India reports relating to the progress of the child alongwith its recent photograph, the frequency of such progress reports being quarterly during the first two years and half yearly for the next three years. The application of the foreigner must also be accompanied by a Power of Attorney in favour of an Officer of the social or child welfare agency in India which is requested to process the case and such Power of Attorney should authorise the Attorney to handle the case on behalf of the foreigner in case the foreigner is not in a position to come to India. The social or child welfare agency sponsoring the application of the foreigner must also certify that the foreigner seeking to adopt a child is permitted to do so according to the law of his country. These certificates, declarations and documents which must accompany the application of the foreigner for taking a child in adoption, should be duly notarised by a Notary Public whose signature should be duly attested either by an Officer of the Ministry of External Affairs or Justice or Social Welfare of the country of the foreigner or by an Officer of the Indian Embassy or High Commission or Consulate in that country. The social or child welfare agency sponsoring the application of the foreigner must also undertake while forwarding the application to the social or child welfare agency in India, that it will ensure adoption of the child by the foreigner according to the law of his country within a period not exceeding two years and as soon as the adoption is effected, it will send two certified copies of the adoption order to the social or child welfare agency in India through which the application for guardianship is processed, so that one copy can be filed in court and the other can remain with the social or child welfare agency in India. The social or child welfare agency sponsoring the application must also agree to send to the concerned social or child welfare agency in India progress reports in regard to the child, quarterly during the first year and half yearly for the subsequent year or years until the adoption is effected, and it must also undertake that in case of disruption of the family of the foreigner before adoption can be effected, it will take care of the child and find a suitable alternative placement for it with the approval of the concerned social or child welfare agency in India and report such alternative placement to the court handling the guardianship proceedings and such information shall be passed on both by the court as also by the concerned social or child welfare agency in India to the Secretary, Ministry of Social Welfare, Government of India. The Government of India shall prepare a list of social or child welfare agencies licensed or recognised for inter-country adoption by the government of each foreign country where children from India are taken in adoption and this list shall be prepared after getting the necessary information from the government of each such foreign country and the Indian Diplomatic Mission in that foreign country. We may point out that the Swedish Embassy has in Annexure II to the affidavit filed on its behalf by Ulf Waltre, given names of seven Swedish organisations or agencies which are authorised by the National Board for Inter-Country Adoption functioning under the Swedish Ministry of Social Affairs to "mediate" applications for adoption by Swedish nationals and the Indian Council of Social Welfare has also in the reply filed by it in answer to the writ petition given a list of government recognised organisations or agencies dealing in inter-country adoption in foreign countries. It should not therefore be difficult for the Government of India to prepare a list of social or child welfare agencies licensed or recognised for inter-country adoption by the Government in various foreign countries. We direct the Government of India to prepare such list within six months from today and copies of such list shall be supplied by the Government of India to the various High Courts in India as also to the social or child welfare agencies operating in India in the area of inter-country adoption under licence or recognition from the Government of India. We may course make it clear that applications of foreigners for appointment of themselves as guardian of children in India with a view to their eventual adoption shall not be held up until such list is prepared by the Government of India but they shall be processed and disposed of in the light of the principles and norms laid down in this judgment.

14. We then proceed to consider the position in regard to biological parents of the child proposed to be taken in adoption. What are the safeguards which are required to be provided in so far as biological parents are concerned? We may make it clear at the outset that when we talk about biological parents, we mean both parents if they are together or the mother or the father if either is alone. Now it should be regarded as an elementary requirement that if the biological parents are known, they should be properly assisted in making a decision about relinquishing the child for adoption, by the Institution or centre or Home for Child Care or social or child welfare agency to which the child is being surrendered. Before a decision is taken by the biological parents to surrender the child for adoption, they should be helped to understand all the implications of adoption including the possibility of adoption by a foreigner and they should be told specifically that in case the child is adopted, it would not be possible for them to have any further contact with the child. The biological parents should not be subjected to any duress in making a decision about relinquishment and even after they have taken a decision to relinquish the child for giving in adoption, a further period of about three months should be allowed to them to reconsider their decision. But once the decision is taken and not reconsidered within such further time as may be allowed to them, it must be regarded as irrevocable and the procedure for giving the child in adoption to a foreigner can then be initiated without any further reference to the biological parents by filing an application for appointment of the foreigner as guardian of the child. Thereafter there can be no question of once again consulting the biological parents whether they wish to give the child in adoption or they want to take it back. It would be most unfair if after a child is approved by a foreigner and expenses are incurred by him for the purpose of maintenance of the child and some times on medical assistance and even hospitalisation for the child, the biological parents were once again to be consulted for giving them a locus penitentia to reconsider their decision. But in order to eliminate any possibility of mischief and to make sure that the child has in fact been surrendered by its biological parents, it is necessary that the Institution or Centre or Home for Child Care or social or child welfare agency to which the child is surrendered by the biological parents, should take from the biological parents a document of surrender duly signed by the biological parents and attested by at least two responsible persons and such document of surrender should not only contain the names of the biological parents and their address but also information in regard to the birth of the child and its background, health and development. If the biological parents state a preference for the religious upbringing of the child, their wish should as far as possible be respected, but ultimately the interest of the child along should be the sole guiding factor and the biological parents should be informed that the child may be given in adoption even to a foreigner who professes a religion different from that of the biological parents. This procedure can and must be followed where the biological parents are known and they relinquish the child for adoption to an Institution or Centre or Home for Child Care or hospital or social or child welfare agency. But where the child is an orphan, destitute or abandoned child and its parents are not known, the Institution or Centre or Home for Child Care or hospital or social or child welfare agency in whose care the child has come, must try to trace the biological parents of the child and if the biological parents can be traced and it is found that they do not want to take back the child, then the same procedure as outlined above should as far as possible be followed. But if for any reason the biological parents cannot be traced, then there can be no question of taking their consent or consulting them. It may also be pointed out that the biological parents should not be induced or encouraged or even be permitted to take a decision in regard to giving of a child in adoption before the birth of the child or within a period of three months from the date of birth. This precaution is necessary because the biological parents must have reasonable time after the birth of the child to take a decision whether to rear up the child themselves or to relinquish it for adoption and moreover it may be necessary to allow some time to the child to overcome any health problems experienced after birth.

15. We may now turn to consider the safeguards which should be observed in so far as the child proposed to be taken in adoption is concerned. It was generally agreed by all parties appearing before the Court, whether as interveners or otherwise, that it should not be open to any and every agency or individual to process an application from a foreigner for taking a child in adoption and such application should be processed only through a social or child welfare agency licensed or recognised by the Government of India or the Government of the State in which it is operating, or to put it differently in the language used by the Indian Council of Social Welfare in the reply filed by it in answer to the writ petition, "all private adoptions conducted by unauthorised individuals or agencies should be stopped". The Indian Council of Social Welfare and the Indian Council for Child Welfare are clearly two social or child welfare agencies operating at the national level and recognised by the Government of India, as appears clearly from the letter dated 23rd August 1980 addressed by the Deputy Secretary to the Government of India to the Secretary, Government of Kerala, Law Department, Annexure `F' to the submissions filed by the Indian Council for Child Welfare in response to the writ petition. But apart from these two recognised social or child welfare agencies functioning at the national level, there are other social or child welfare agencies engaged in child care and welfare and if they have good standing and reputation and are doing commendable work in the area of child care and welfare, there is no reason why they should not be recognised by the Government of India or the Government of a State for the purpose of inter-country adoptions. We would direct the Government of India to consider and decide within a period of three months from today whether any of the institutions or agencies which have appeared as interveners in the present writ petition are engaged in child care and welfare and if so, whether they deserve to be recognised for inter-country adoptions. Of course it would be open to the Government of India or the Government of a State suo motu or on an application made to it to recognise any other social or child welfare agency for the purpose of inter-country adoptions, provided such social or child welfare agency enjoys good reputation and is known for its work in the field of child care and welfare. We would suggest that before taking a decision to recognise any particular social or child welfare agency for the purpose of inter-country adoptions, the Government of India or the Government of a State would do well to examine whether the social or child welfare agency has proper staff with professional social work experience, because otherwise it may not be possible for the social or child welfare agency to carry out satisfactorily the highly responsible task of ensuring proper placement of a child with a foreign adoptive family. It would also be desirable not to recognise an organisation or agency which has been set up only for the purpose of placing children in adoption: it is only an organisation or agency which is engaged in the work of child care and welfare which should be regarded as eligible for recognition, since inter-country adoption must be looked upon not as an independent activity by itself, but as part of child welfare programme so that it may not tend to degenerate into trading. The Government of India or the Government of a State recognising any social or child welfare agency for inter-country adoptions must insist as a condition of recognition that the social or child welfare agency shall maintain proper accounts which shall be audited by a chartered accountant at the end of every year and it shall not charge to the foreigner wishing to adopt a child any amount in excess of that actually incurred by way of legal or other expenses in connection with the application for appointment of guardian including such reasonable remuneration or honorarium for the work done and trouble taken in processing, filing and pursuing the application as may be fixed by the Court.

16. Situations may frequently arise where a child may be in the care of a child welfare institution or centre or social or child welfare agency which has not been recognised by the Government. Since an application for appointment as guardian can, according to the principles and norms laid down by us, be processed only by a recognised social or child welfare agency and non else, any unrecognised institution, centre or agency which has a child under its care would have to approach a recognised social or child welfare agency if it desires such child to be given in inter-country adoption, and in that event it must send without any undue delay the name and particulars of such child to the recognised social or child welfare agency through which such child is proposed to be given in inter-country adoption. Every recognised social or child welfare agency must maintain a register in which the names and particulars of all children proposed to be given in inter-country adoption through it must be entered and in regard to each such child, the recognised social or child welfare agency must prepare a child study report through a professional social worker giving all relevant information in regard to the child so as to help the foreigner to come to a decision whether or not to adopt the child and to understand the child, if he decides to adopt it as also to assist the court in coming to a decision whether it will be for the welfare of the child to be given in adoption to the foreigner wishing to adopt it. The child study report should contain as far as possible information in regard to the following matters:

> "(1) Identifying information, supported where possible by documents.
> (2) Information about original parents, including their health and details of the mother's pregnancy and birth.
> (3) Physical, intellectual and emotional development.
> (4) Health report prepared by a registered medical practitioner preferably by a paediatrician.
> (5) Recent photograph.
> (6) Present environment—category of care (Own home, foster home, institution etc.) relationships, routines and habits.
> (7) Social worker's assessment and reasons for suggesting inter-country adoption."

The Government of India should, with the assistance of the Government of the States, prepare a list of recognised social or child welfare agencies with their names, addresses and other particulars and send such list to the appropriate department of the Government of each foreign country where Indian children are ordinarily taken in adoption so that the social or child welfare agencies licensed or recognised by the Government of such foreign country for inter-country adoptions, would know which social or child welfare agency in India they should approach for processing an application of its national for taking an Indian child in adoption. Such list shall also be sent by the Government of India to each High Court with a request to forward it to the district courts within its jurisdiction so that the High Courts and the district courts in the country would know which are the recognised social or child welfare agencies entitled to process an application for appointment of a foreigner as guardian. Of course, it would be desirable if a Central Adoption Resource Agency is set up by the Government of India with regional branches at a few centres which are active in inter-country adoption. Such Central Adoption Resource Agency can act as a clearing house of information in regard to children available for inter country adoption and all applications by foreigners for taking Indian children in adoption can then be forwarded by the social or child welfare agency in the foreign country to such Central Adoption Resource Agency and the latter can in its turn forward them to one or the other of the recognised social or child welfare agencies in the country. Every social or child welfare agency taking children under its care can then be required to send to such Central Adoption Resource Agency the names and particulars of children under its care who are available for adoption and the names and particulars of such children can be entered in a register to be maintained by such Central Adoption Resource Agency. But until such Central Adoption Resource Agency is set up, an application of a foreigner for taking an Indian child in adoption must be routed through a recognised social or child welfare agency. Now before any such application from a foreigner is considered, every effort must be made by the recognised social or child welfare agency to find placement for the child by adoption in an Indian family. Whenever any Indian family approaches a recognised social or child welfare agency for taking a child in adoption, all facilities must be provided by such social or child welfare agency to the Indian family to have a look at the children available with it for adoption and if the Indian family wants to see the child study report in respect of any particular child, such child study report must also be made available to the Indian family in order to enable the Indian family to decide whether they would take the child in adoption. It is only if no Indian family comes forward to take a child in adoption within a maximum period of two months that the child may be regarded as available for inter-country adoption, subject only to one exception, namely, that if the child is handicapped or is in bad state of health needing urgent medical attention, which is not possible for the social or child welfare agency looking after the child to provide, the recognised social or child welfare agency need not wait for a period of two months and it can and must take immediate steps for the purpose of giving such child in inter-country adoption. The recognised social or child welfare agency should, on receiving an application of a foreigner for adoption through a licensed or recognised social or child welfare agency in a foreign country, consider which child would be suitable for being given in adoption to the foreigner and would fit into the environment of his family and community and send the photograph and child study report of such child to the foreigner for the purpose of obtaining his approval to the adoption of such child. The practice of accepting a general approval of the foreigner to adopt any child should not be allowed, because it is possible that if the foreigner has not seen the photograph of the child and has not studied the child study report and a child is selected for him by the recognised social or child welfare agency in India on the basis of his general approval, he may on the arrival of the child in his country find that he does not like the child or that the child is not suitable in which event the interest of the child would be seriously prejudiced. The recognised social or child welfare agency must therefore insist upon approval of a specific known child and once that approval is obtained, the recognised social or child welfare agency should immediately without any undue delay proceed to make an application for appointment of the foreigner as guardian of the child. Such application would have to be made in the court within whose jurisdiction the child ordinarily resides and must be accompanied by copies of the home study report, the child study report and other certificates and documents forwarded by the social or child welfare agency sponsoring the application of the foreigner for taking the child in adoption.

17. Before we proceed to consider what procedure should be followed by the court in dealing with an application for appointment of a foreigner as guardian of a child, we may deal with a point of doubt which was raised before us, namely, whether the social or child welfare agency which is looking after the child should be entitled to receive from the foreigner wishing to take the child in adoption any amount in respect of maintenance of the child or its medical expenses. We were told that there are instances where large amounts are demanded by so called social or child welfare agencies or individuals in consideration of giving a child in adoption and often this is done under the label of maintenance charges and medical expenses supposed to have been incurred for the child. This is a pernicious practice which is really nothing short of trafficking in children and it is absolutely necessary to put an end to it by introducing adequate safeguards. There can be no doubt that if an application of a foreigner for taking a child in adoption is required to be routed through a recognised social or child welfare agency and the necessary steps for the purpose of securing appointment of the foreigner as guardian of the child have also to be taken only through a recognised social or child welfare agency, the possibility of any so called social or child welfare agency or individual trafficking in children by demanding exhorbitant amounts from prospective adoptive parents under the guise of maintenance charges and medical expenses or otherwise, would be almost eliminated. But, at the same time, it would not be fair to suggested that the social or child welfare agency which is looking after the child should not be entitled to receive any amount from the prospective adoptive parent, when maintenance and medical expenses in connection with the child are actually incurred by such social or child welfare agency. Many of the social or child welfare agencies running homes for children have little financial resources of their own and have to depend largely on voluntary donations and therefore if any maintenance or medical expenses are incurred by them on a child, there is no reason why they should not be entitled to receive reimbursement of such maintenance and medical expenses from the foreigner taking the child in adoption. We would therefore direct that the social or child welfare agency which is looking after the child selected by a prospective adoptive parent, may legitimately receive from such prospective adoptive parent maintenance expenses at a rate not exceeding Rs. 60/- per day (this outer limit being subject to revision by the Ministry of Social Welfare, Government of India from time to time) from the date of selection of the child by him until the date the child leaves for going to its new home as also medical expenses including hospitalisation charges, if any, actually incurred by such social or child welfare agency for the child. But the claim for payment of such maintenance charges and medical expenses shall be submitted to the prospective adoptive parent through the recognised social or child welfare agency which has processed the application for guardianship and payment in respect of such claim shall not be received directly by the social or child welfare agency making the claim but shall be paid only through the recognised social or child welfare agency. This procedure will to a large extent eliminate trafficking in children for money or benefits in kind and we would therefore direct that this procedure shall be followed in the future. But while giving this direction, we may make it clear that what we have said should not be interpreted as in any way preventing a foreigner from making voluntary donation to any social or child welfare agency but no such donation from a prospective adoptive parent shall be received until after the child has reached the country of its prospective adoptive parent.

18. It is also necessary to point out that the recognised social or child welfare agency through which an application of a foreigner for taking a child in adoption is routed must, before offering a child in adoption, make sure that the child is free to be adopted. Where the parents have relinquished the child for adoption and there is a document of surrender, the child must obviously be taken to be free for adoption. So also where a child is an orphan or destitute or abandoned child and it has not been possible by the concerned social or child welfare agency to trace its parents or where the child is committed by a juvenile court to an institution, centre or home for committed children and is declared to be a destitute by the juvenile court, it must be regard as free for adoption. The recognised social or child welfare agency must place sufficient material before the court, to satisfy it that the child is legally available for adoption. It is also necessary that the recognised social or child welfare agency must satisfy itself, firstly, that there is no impediment in the way of the child entering the country of the prospective adoptive parent; secondly, that the travel documents for the child can be obtained at the appropriate time and lastly, that the law of the country of the prospective adoptive parent permits legal adoption of the child and that no such legal adoption being concluded, the child would acquire the same legal status and rights of inheritance as a natural born child and would be granted citizenship in the country of adoption and it should file along with the application for guardianship, a certificate reciting such satisfaction.

19. We may also at this stage refer to one other question that was raised before us, namely, whether a child under the care of a social or child welfare agency or hospital or orphanage in one State can be brought to another State by a social or child welfare agency for the purpose of being given in adoption and an application for appointment of a guardian of such child can be made in the court of the latter State. This question was debated before us in view of the judgment given by Justice Lentin of the Bombay High Court on 22nd July 1982 in Miscellaneous Petition No. 178 of 1982 and other allied petitions. We agree with Justice Lentin that the practice of social or child welfare agencies or individuals going to different States for the purpose of collecting children for being given in inter-country adoption is likely to lead to considerable abuse, because it is possible that such social or child welfare agencies or individuals may, by offering monetary inducement, persuade indigent parents to part with their children and then give the children to foreigners in adoption by demanding a higher price, which the foreigners in their anxiety to secure a child for adoption may be willing to pay. But we do not think that if a child is relinquished by its biological parents or is an orphan or destitute or abandoned child in its parent State, there should be any objection to a social or child welfare agency taking the child to another State, even if the object be to give it in adoption, provided there are sufficient safeguards to ensure that such social or child welfare agency does not indulge in any mal-practice. Since we are directing that every application of a foreigner for taking a child in adoption shall be routed only through a recognised social or child welfare agency and an application for appointment of the foreigner as guardian of the child shall be made to the court only through such recognised social or child welfare agency, there would hardly be any scope for a social or child welfare agency or individual who brings a child from another State for the purpose of being given in adoption to indulge in trafficking and such a possibility would be reduced to almost nil. Moreover before proposing a child for adoption, the recognised social or child welfare agency must satisfy itself that the child has either been voluntarily relinquished by its biological parents without monetary inducement or is an orphan or destitute or abandoned child and for this purpose, the recognised social or child welfare agency may require the agency or individual who has the care and custody of the child to state on oach as to how he came by the child and may also, if it thinks fit, verify such statement, by directly enquiring from the biological parents or from the child care centre or hospital or orphanage from which the child is taken. This will considerably reduce the possibility of abuse while at the same time facilitating placement of children deprived of family love and care in smaller towns and rural areas. We do not see any reason why in cases of this kind where a child relinquished by its biological parents or an orphan or destitute or abandoned child is brought by an agency or individual from the State to another, it should not be possible to apply for guardianship of the child in the court of the latter State, because the child not having any permanent place of residence, would then be ordinarily resident in the place where it is in the care and custody of such agency or individual. But, quite apart from such cases, we are of the view that in all cases where a child is proposed to be given in adoption, enquiries regarding biological parents, whether they are traceable or not and if traceable whether they have voluntarily relinquished the child and if not, whether they wish to take the child back, should be completed before the child is offered for adoption and thereafter no attempt should be made to trace or contact the biological parents. This would obviate the possibility of an ugly and unpleasant situation of biological parents coming forward to claim the child after it has been given to a foreigner in adoption. It is also necessary while considering placement of a child in adoption to bear in mind that brothers and sisters or children who have been brought up as siblings should not be separated except for special reasons and as soon as a decision to give a child in adoption to a foreigner is finalised, the recognised social or child welfare agency must if the child has reached the age of understanding, take steps to ensure that the child is given proper orientation and is prepared for going to its new home in a new country so that the assimilation of the child to the new environment is faciliated.

20. We must emphasize strongly that the entire procedure which we have indicated above including preparation of child study report, making of necessary enquiries and taking of requisite steps leading upto the filing of an application for guardianship of the child proposed to be given in adoption, must be completed expeditiously so that the child does not have to remain in the care and custody of a social or child welfare agency without the warmth and affection of family life, longer than is absolutely necessary.

21. We may also point out that if a child is to be given in inter-country adoption, it would be desirable that it is given in such adoption as far as possible before it completes the age of 3 years. The reason is that if a child is adopted before it attains the age of understanding, it is always easier for it to get assimilated and integrated in the new environment in which it may find itself on being adopted by a foreign parent. Comparatively it may be some what difficult for a grown up child to get acclamatized to new surroundings in a different land and some times a problem may also arise whether foreign adoptive parents would be able to win the love and affection of such grown up child. But we make it clear that we say this, we do not wish to suggest for a moment that children above the age of three years should not be given in inter-country adoption. There can be no hard and fast rule in this connection. Even children between the ages of 3 and 7 years may be able to assimilate themselves in the new surroundings without any difficulty and there is no reason why they should be denied the benefit of family warmth and affection in the home of foreign parents, merely because they are past the age of 3 years. We would suggest that even children above the age of 7 years may be given in inter-country adoption but we would recommend that in such cases, their wishes may be ascertained if they are in a position to indicate any preference. The statistics placed before us shows that even children past age of 7 years have been happily integrated in the family of their foreign adoptive parents.

22. Lastly, we come to the procedure to be followed by the court when an application for guardianship of a child is made to it. Section 11 of the Guardians and Wards Act 1890 provides for notice of the application to be issued to various persons including the parents of the child if they are residing in any State to which the Act extends. But, we are definitely of the view that no notice under this section should be issued to the biological parents of the child, since it would create considerable amount of embarrassment and hardship if the biological parents were then to come forward and oppose the application of the prospective adoptive parent for guardianship of the child. Moreover, the biological parents would then come to know who is the person taking the child in adoption and with this knowledge they would at any time be able to trace the whereabouts of the child and they may try to contact the child resulting in emotional and psychological disturbance for the child which might affect his future happiness. The possibility also cannot be ruled out that if the biological parents know who are the adoptive parents they may try to extort money from the adoptive parents. It is therefore absolutely essential that the biological parents should not have any opportunity of knowing who are the adoptive parents taking the child in adoption and therefore notice of the application for guardianship should not be given to the biological parents. We would direct that for the same reasons notice of the application for guardianship should also not be published in any newspaper. Section 11 of the Act empowers the court to serve notice of the application for guardianship on any other person to whom, in the opinion of the court, special notice of the application should be given and in exercise of this power the court should, before entertaining an application for guardianship, give notice to the Indian Council of Child Welfare or the Indian Council for Social Welfare or any of its branches for scrutiny of the application with a view to ensuring that it will be for the welfare of the child to be given in adoption to the foreigner making the application for guardianship. The Indian Council of Social Welfare or the Indian Council of Child Welfare to which notice is issued by the court would have to scrutinise the application for guardianship made on behalf of the foreigner wishing to take the child in adoption and after examining the home study report, the child study report as also documents and certificates forwarded by the sponsoring social or child welfare agency and making necessary enquiries, it must make its representation to the court so that the court may be able to satisfy itself whether the principles and norms also as the procedure laid down by us in this judgment have been observed and followed, whether the foreigner will be a suitable adoptive parent for the child and the child will be able to integrate and assimilate itself in the family and community of the foreigner and will be able to get warmth and affection of family life as also moral and materialist ability and security and whether it will be in the interest of the child to be taken in adoption by the foreigner. If the court is satisfied, then and then only it will make an order appointing the foreigner as guardian of the child and permitting him to remove the child to his own country with a view to eventual adoption. The court will also introduce a condition in the order that the foreigner who is appointed guardian shall make proper provision by way of deposit or bond or otherwise to enable the child to be repatriated to India should it become necessary for any reason. We may point out that such a provision is to be found in clause 24 of the Adoption of Children Bill No. 208 of 1980 and in fact the practice of taking a bond from the foreigner who is appointed guardian of the child is being following by the courts in Delhi as a result of practice instructions issued by the High Court of Delhi. The order will also include a condition that the foreigner who is appointed guardian shall submit to the Court as also to the Social or Child Welfare Agency processing the application for guardianship, progress reports of the child along with a recent photograph quarterly during the first two years and half yearly for the next three years. The court may also while making the order permit the social or child welfare agency which has taken care of the child pending its selection for adoption to receive such amount as the Court thinks fit from the foreigner who is appointed guardian of such child. The order appointing guardian shall carry, attached to it, a photograph of the child duly counter-signed by an officer of the court. This entire procedure, shall be completed by the court expeditiously and as far as possible within a period of two months from the date of filing of the application for guardianship of the child. The proceedings on the application for guardianship should be held by the Court in camera and they should be regarded as confidential and as soon as an order is made on the application for guardianship the entire proceedings including the papers and documents should be sealed. When an order appointing guardian of a child is made by the court, immediate intimation of the same shall be given to the Ministry of Social Welfare, Government of India as also to the Ministry of Social Welfare of the Government of the State in which the court is situate and copies of such order shall also be forwarded to the two respective ministries of Social Welfare. The Ministry of Social Welfare, Government of India shall maintain a register containing names and other particulars of the children in respect of whom orders for appointment of guardian have been made as also names, addresses and other particulars of the prospective adoptive parents who have been appointed such guardians and who have been permitted to take away the children for the purpose of adoption. The Government of India will also send to the Indian Embassy or High Commission in the country of the prospective adoptive parents from time to time the names, addresses and other particulars of such prospective adoptive parents together with particulars of the children taken by them and requesting the Embassy or High Commission to maintain an unobtrusive watch over the welfare and progress of such children in order to safeguard against any possible mal-treatment, exploitation or use for ulterior purposes and to immediately report any instance of mal-treatment, negligence or exploitation to the Government of India for suitable action.

23. We may add even at the cost of repeatition that the biological parents of a child taken in adoption should not under any circumstances be able to know who are the adoptive parents of the child nor should they have any access to the home study report or the child study report or the other papers and proceedings in the application for guardianship of the child. The foreign parents who have taken a child in adoption would normally have the child study report within them before they select the child for adopting and in case they do not have the child study report, the same should be supplied to them by the recognised social or child welfare agency processing the application for guardianship and from the child study report, they would be able to gather information as to who are the biological parents of the child, if the biological parents are known. There can be no objection in furnishing to the foreign adoptive parents particulars in regard to the biological parents of the child taken in adoption, but it should be made clear that it would be entirely at the discretion of the foreign adoptive parents whether and if so when, to inform the child about its biological parents. Once a child is taken in adoption by a foreigner and the child grows up in the surroundings of the country of adoption and becomes a part of the society of that country, it may not be desirable to give information to the child about its biological parents whilst it is young, as that might have the effect of exciting his curiosity to meet its biological parents resulting in unsettling effect on its mind. But if after attaining the age of maturity, the child wants to know about its biological parents, there may not be any serious objection to the giving of such information to the child because after the child attains maturity, it is not likely to be easily affected by such information and in such a case, the foreign adoptive parents may, in excercise of their discretion, furnish such information to the child if they so think fit.

24. These are the principles and norms which must be observed and the procedure which must be followed in giving a child in adoption to foreign parents. If these principles and norms are observed and this procedure is followed, we have no doubt that the abuses to which inter-country adoptions, if allowed without any safeguards, may lend themselves would be considerably reduced, if not eliminated and the welfare of the child would be protected and it would be able to find a new home where it can grow in an atmosphere of affection of family life with full opportunities for physical, intellectual and spiritual development. We may point out that the adoption of children by foreign parents need not wait until social or child welfare agencies are recognised by the Government as directed in this order, but pending recognition of social or child welfare agencies for the purpose of inter-country adoptions, which interregnum, we hope, will not last for a period of more than two months, any social or child welfare agency having the care and custody of a child may be permitted to process an application of a foreigner, but barring this departure, the rest of the procedure laid down by us shall be followed wholly and the principles and norms enunciated by us in this Judgment shall be observed in giving a child in inter-country adoption.

25. The writ petition shall stand disposed of in these terms. Copies of this order shall be sent immediately to the Ministry of Social Welfare of the Government of India and the Ministry of Social Welfare of each of the State Government as also to all the High Courts in the country and to the Indian Council of Social Welfare and the Indian Council of Child Welfare. We would direct that copies of this Order shall also be supplied to the Embassies and Diplomatic Missions of Norway, Sweden, France, Federal Republic of Germany and the United States of America and the High Commissions of Canada and Australia for their information since the statistics show that these are the countries where Indian children are taken in adoption.

ANNEXURE-'A'

1. Source of Referral.
2. Number of single and joint interviews.
3. Personality of husband and wife.
4. Health details such as clinical tests, heart condition, past illnesses etc. (medical certificates required, sterility certificate required, if applicable).
5. Social status and family background.
6. Nature and Adjustment with occupation.
7. Relationship with community.
8. Description of home.
9. Accommodation for the child.
10. Schooling facilities.
11. Amenities in the home.
12. Standard of living as it appears in the home.
13. Type of neighbourhood.
14. Current relationship between husband and wife.
15. (a) Current relationship between parents and children (if any children)
    (b) Development of already adopted children (if any) and their acceptance of the child to be adopted.
16. Current relationship between the couple and the members of each other's families.
17. If the wife is working, will she be able to give up the job?
18. If she cannot leave the job, what arrangements will she make to look after the child?
19. Is adoption considered because of sterility of one of the marital partners?
20. If not, can they eventually have children of their own?
21. If a child is born to them, how will they treat the adopted child?
22. If the couple already has children how will these children react to an adopted child?
23. Important social and psychological experiences which have had a bearing on their desire to adopt a child.
24. Reasons for wanting to adopt an Indian

child.

25. Attitude of grand-parents and relatives towards the adoption.
26. Attitude of relatives, friends, community and neighbourhood towards adoption of an Indian child.
27. Anticipated plans for the adopted child.
28. Can the child be adopted according to the adoption law in the adoptive parents country? Have they obtained the necessary permission to adopt? (Statement of permission required.)
29. Do the adoptive parents know any one who adopted a child from their own country or another country? Who are they? From where did they fail to get a child from that source?
30. Did the couple apply for a child from any other source? If yes, which source?
31. What type of child is the couple interested in? (sex, age, and for what reasons.)
32. Worker's recommendation concerning the family and the type of child which would best fit into this home.
33. Name and address of the agency conducting the home study Name of social worker, qualification of social worker.
34. Name of agency responsible for post placement, supervision and follow up.

SCALE (PIL) 1981-97 1350

JAGRITI UPBHOGTA KALYAN PARISHAD & ORS. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: A.M. AHMADI CJI, J.S. VERMA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — LIBERALIZATION OF THE ECONOMY — SUPPLY OF L.P.G. PRODUCTS — Allotment monies paid by consumers to the company but no services received from Respondent No.12 (S.B. Petroleum) — Court issues notice in the writ petition.

[Ed.Note: The present Public Interest Petition is preferred on behalf of various consumers from nine states viz. Madhya Pradesh, Maharashtra, Karnataka, Uttar Pradesh, Haryana, Rajasthan, Bihar, Delhi, Punjab and the State level, District level distributors and dealers of M/s S.B. Petroleum Limited. Under the liberalisation policy of the Government, decanalising and delicencing of liquified Petroleum Gas and Kerosene has been permitted. It is alleged that with the implementation of the policy and in the absence of proper monitoring thereof hundreds of individuals suffered a loss. It is alleged that one such company, Respondent No. 12, was formed by an influential political family. As a result many Dealers/Distributors and allottees/consumers who had invested their entire life savings had lost everything due to Govt's inaction in dealing strictly with the people who have committed a fraud.]

1. Issue notice to the Union of India (Respondent No.1) to the State of U.P. (Respondent No. 5) and to S.B. Petroleum Ltd. (Respondent No.12) returnable within four weeks.

Order dated November 5, 1996 in W.P. (C) No. 758/96. [1997(7) SCALE (SP) 1]

SCALE (PIL) 1981-97 1351

JAGRITI UPBHOGTA KALYAN PARISHAD & ORS. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — LIBERALIZATION OF THE ECONOMY — SUPPLY OF L.P.G. PRODUCTS — Allotment monies paid by consumers to the company but no services received from Respondent No.12 (S.B. Petroleum) — Court appoints amicus curiae in the matter and directs that in accordance with the practice followed by the Court in similar matters, no impleadment/intervention is to be allowed and any one who wants to assist in the matter has to do so through the amicus curiae, appointed for the purpose — Court records statement of counsel for Respondent No. 12 that it is willing to refund the entire amount due to the consumers and necessary action would be taken by respondent No. 12 for this purpose.

1. In accordance with the practice followed by the Court in similar matters, no impleadment/intervention is to be allowed and any one who wants to assist in the matter has to do so through the amicus curiae, appointed for the purpose. The applications for impleadment and intervention are, therefore, rejected.

2. Mr. A.K. Ganguli, learned Senior advocate is requested to appear as amicus curiae in this matter. Learned counsel for the petitioner to supply papers to Mr. A.K. Ganguli.

3. Mr. Rajinder Sachar, learned Senior counsel for respondent No. 12 submits that respondent No. 12 is willing to refund the entire amount due to the consumers and necessary action would be taken by respondent No. 12 for this purpose. He submits that refund to all the consumers would be made by respondent No. 12 within four weeks.

4. In view of this statement made on behalf of respondent No. 12, we defer consideration of the other aspects of the matter to the next date. List the matter on 5th May, 1997.

Order dated March 31, 1997 in W.P. (C) No. 758/96. [1997(7) SCALE (SP) 1]

SCALE (PIL) 1981-97 1351

JAGRITI UPBHOGTA KALYAN PARISHAD & ORS. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — LIBERALIZATION OF THE ECONOMY — SUPPLY OF L.P.G. PRODUCTS — Allotment monies paid by consumers to the company but no services received from Respondent No.12 (S.B. Petroleum) — Court issues further directions regarding refund to consumers of their allotment money.

Order dated May 5, 1997 in W.P. (C) No. 758/96. [1997(7) SCALE (SP) 2]

1. Mr. Rajinder Sachar, learned counsel for respondent No. 12 submits that refunds are being made by respondent No. 12 to the consumers and the process is likely to be completed soon. It is, therefore, appropriate that we defer consideration of the other aspects of the matter for the time being. Respondent No. 12 would file before the next date of hearing, a complete list giving particulars of the consumers (dealer and State-wise) to whom refund is made including the amount refunded.

2. List on 26.8.1997.

SCALE (PIL) 1981-97 1352
INDIA GAS AGENCY & ORS. *Petitioners*
VS
U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — LIBERALIZATION OF THE ECONOMY — SUPPLY OF L.P.G. PRODUCTS — Allotment monies paid by consumers to the company but no services received — Court dismisses the petition as an identical matter is pending and there is no reason to entertain another writ petition as a PIL for the same purpose.

1. Writ Petition No. 758 of 1996 pending in this Court is an identical matter which has been treated as PIL and an amicus curiae has been appointed therein. There is no reason to entertain another writ petition as a PIL for the same purpose. Learned counsel for the petitioner, therefore, seeks leave to withdraw this petition stating that the petitioners would assist the amicus curiae in the matter which is pending in the Court.

2. The writ petition is dismissed as withdrawn.

Order dated August 11, 1997 in W.P. (C) No. 372/97. [1997(7) SCALE (SP) 2]

SCALE (PIL) 1981-97 1352
JAGRITI UPBHOGTA KALYAN PARISHAD & ORS. *Petitioners*
VS
U.O.I. & ORS. *Respondents*

CORAM: DR. A.S. ANAND AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — LIBERALIZATION OF THE ECONOMY — SUPPLY OF L.P.G. PRODUCTS — Allotment monies paid by consumers to the company but no services received from Respondent No.12 (S.B. Petroleum) — Court directs respondent No.12 to deposit the entire balance amount due as refund to the consumers in this Court within four weeks — Court also directs Respondent No. 12 to file a comprehensive affidavit indicting the amounts received by it from the dealers and the distributors together with the details of the amounts from each of the dealers and distributors.

Order dated August 26, 1997 in W.P. (C) No. 758/96.[1997(7) SCALE (SP) 3]

1. An affidavit has been filed on behalf of respondent No. 12 indicating the number of consumers to whom refunds have been made. List of the consumers from whom the amounts had been received has also been attached with the affidavit. Before proceeding further in the matter, it appears appropriate to us, keeping in view the large number of consumers to whom refund has still to be made to direct respondent No. 12 to deposit the entire balance amount due as refund to the consumers in this Court within four weeks. Directions for disbursement of that amount shall be given by us after four weeks.

2. In the meantime respondent No. 12 shall also file a comprehensive affidavit indicting the amounts received by it from the *dealers* and the *distributors* together with the details of the amounts form each of the dealers and distributors. Mr. Sachar, learned Senior counsel, submits that respondent No. 12 has not refunded any amount to any distributor or dealer so far.

3. It shall also be indicated by an affidavit as to how many consumers have so far been refunded the amount and by what manner.

4. List after four weeks for directions.

SCALE (PIL) 1981-97 1353

JAGRITI UPBHOGTA KALYAN PARISHAD & ORS. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA CJI, B.N. KIRPAL AND S. RAJENDRA BABU, JJ.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — LIBERALIZATION OF THE ECONOMY — SUPPLY OF L.P.G. PRODUCTS — Allotment monies paid by consumers to the company but no services received from Respondent No.12 (S.B. Petroleum) — Court issues specific directions regarding refund to consumers of their allotment money and also details of assets of the respondent, their dealers and distributors.

1. Sh. Sachar, learned counsel for respondent No. 12 submits on instructions that subsequent to the order dated 31st March, 1997 respondent no. 12 has refunded the deposit made by 59,000 consumers by account payee cheques of Rs. 250/- each and also refunded to 8626 consumers their allotment money of Rs. 200/- each in the same manner, in addition to the deposit of 14,000 consumers made earlier and the continued supply of gas to the remaining 12,000 consumers. This assertion of respondent No. 12 is supported only by the contents of para 17 of the affidavit dated 17th October, 1997. Sh. A.K. Ganguli, learned amicus curiae, informs us that he has received certain complaints from consumers alleging that refund of their deposit has not been made to them by respondent No. 12. It is obvious that respondent No. 12 would have sufficient documentary material including the bank statement to support its assertion of refund of the amount to the consumers but the same has not been produced as yet. Respondent No. 12 must, therefore, produce the same and supply copies thereof to the learned amicus curiae and the learned counsel for the Central Government to enable them to verify the correctness of

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Order dated October 21, 1997 in W.P. (C) No. 758/96. [1997(7) SCALE (SP) 4]

the statement made on behalf of respondent No. 12. Respondent No. 12 should also produce a copy of the statement by the concerned bank certifying the fact of encashment of those cheques in favour of the payee/consumers. The balance sheet of the year subsequent to 31st March, 1994 should also be produced.

2. Sh. Sachar further stated that the respondents 12 to 14 offer to have the entire dispute between the company and distributors/dealers settled by an arbitrator appointed by this Court to be assisted by a chartered accountant so as to bring an early conclusion to the dispute regarding the civil liabilities of these respondents. Learned counsel also submitted that a list of all the assets of these respondents together with their value and the nature of respondents' interest therein would be filed along with an affidavit to show that sufficient security is available for recovery of the amount due to the dealers/distributers in terms of liability under this head shown in the company's balance sheet as on 31st March, 1994. It is necessary to have these particulars for satisfaction that the respondents are possessed of sufficient assets to discharge this liability. The question whether the direction should be given to these respondents to deposit the amount shown to be their liabilities towards the distributors/dealers in their balance sheet would be considered on the next date.

3. The respondents are required to comply with the above requirement within three weeks furnishing copies thereof to the learned Amicus and the Additional Solicitor General. List the matter on 17th November, 1997.

SCALE (PIL) 1981-97 1354

RESEARCH FOUNDN. FOR SCIENCE TECHNOLOGY & NATURAL RESOURCE POLICY *Petitioner*

VS

U.O.I. & ANR. *Respondents*

CORAM: J.S. VERMA CJI, S.B. MAJMUDAR AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — HAZARDOUS WASTE — High Power Committee constituted under the chairmanship of Prof. M.G.K. Menon — Update of order reported in 1997(5) SCALE 495.

1. The learned Additional Solicitor General informs us that the Government of India, Ministry of Environment and Forests has taken a decision to constitute a High Power Committee with Prof. M.G.K. Menon, former Minister for Science and Technology, Government of India as its Chairman to examine in depth all matters relating to hazardous wastes and to give their report/recommendations at an early date. The composition of the Committee is indicated as under:

Prof. M.G.K. Menon, Chairman
Shri Paritosh Tyagi, Member
Dr. P.K. Seth, Member
Dr. K.R. Ranganathan, Member
Dr. Claude Alvaris, Member
Dr. A.K. Saxena, Member
Dr. R.R. Khan, Member

2. The learned Addl. Solicitor General submitted that a copy of the notification issued by the Government of India to this effect would be filed in these proceedings for record. The notification is expected to be

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Order dated October 13, 1997 in W.P. (C) No. 657/95. [1997(7) SCALE (SP) 5]

issued by the Government of India within a week. The Committee so constituted is requested to submit its first report in this Court within a period of two months of its constitution.

3. List on 15th December, 1997.

I.A. No. 7:

4. Learned counsel for JCT Limited. Sriganganagar submits that the suit filed in the Civil Court at Sriganganagar is to be withdrawn and a reply to this effect would be filed within two weeks.

SCALE (PIL) 1981-97 1355

KRISHNA MOHAN SHUKLA *Petitioner*

VS

U.O.I. & ORS. *Respondents*

CORAM: S.C. AGRAWAL AND G.T. NANAVATI, JJ.

PUBLIC INTEREST LITIGATION — BHOPAL GAS TRAGEDY — CLAIMS SETTLED BY LOK ADALATS — Claimants not allowed to be represented by lawyers and the claims were decided in the absence of any legal asistance being available to the claimants and proper medical evidence was not allowed to be produced in support of the claims — It was also contended that awards by the Lok Adalats are less than the amount payable under the Scheme of 1985 — Appeals by claimants not entertained by the concerned Additional Welfare Commissioner on the ground that no appeal lay against such awards — Court issues certain directions.

1. The petitioner has submitted that in respect of the claims which were disposed of by the Lok Adalats during the period from February 5, 1995 till September 15, 1995 the claimants were not allowed to be represented by lawyers and the claims were decided in the absence of any legal assistance being available to the claimants and proper medical evidence was not allowed to be produced in support of the claims. It has also been submitted that in many of the claims by claimants were falling in Medical Category 'C' and above and that the amount of compensation that has been awarded by the Lok Adalats is less than the amount payable under the Scheme of 1985. The petitioner has also stated that appeals filed by the claimants against the Lok Adalats have not been entertained by the concerned Additional Welfare Commissioner on the ground that no appeal lay against such awards. In the circumstances, it is directed that the claimant falling in Medical Category 'C' and above who feels aggrieved by the amount of compensation awarded by the Lok Adalats and the appeal being not entertained by the Additional Welfare Commissioner against such award may file a review petition for review of the award. Such review petition shall be considered by the concerned Additional Welfare Commissioner. The office of the Welfare Commissioner shall issue a public notice with regard to above direction given by this Court and publish it in a local newspaper so that the claimants may know that they can file a review petition. The review petition should be filed within two months from the date of the publication of the notice.

2. The petitioner has also pointed out that

Order dated November 7, 1997 in W.P. (C) No. 66/95. [1997(7) SCALE (SP) 6] the guidelines prepared by Shri V.K. Saxena, who was functioning as the Welfare Commissioner, are being followed by the Deputy Welfare Commissioners/Additional Welfare Commissioners while dealing with even though under the Scheme of 1985 compensation has to be awarded in the range as prescribed for each medical category. In this regard, it is directed that the Welfare Commissioner shall examine the said guidelines in the light of the norms laid down in the Scheme and, if he finds that the guidelines need modification, he may direct such modification in the guidelines. As regards following of the guidelines, it is directed that the Deputy Welfare - Commissioners and the Additional Welfare Commissioners, while determining the compensation shall take into consideration not only the said guidelines but also the evidence that is adduced by the claimant in support of his claim and shall determine the amount of compensation accordingly.

3. The petitioner has also referred to the grievance of the claimants that in many cases where claim for compensation has been adjudicated and award has been made by the Deputy/Additional Welfare Commissioner, the Welfare Commissioner, in exercise of his suo-moto power of revision, has re-opened the matter and in that event nothing is being paid to the claimant against the compensation that has been awarded to him during the pendency of such revision. In this connection, it is directed that if the Welfare Commissioner invokes his power of suo moto revision in respect of orders passed by the Deputy/Additional Welfare Commissioner, he shall pass an appropriate order whether the whole or a part of the amount of compensation should be disbursed during the pendency of the revision.

4. In his affidavit dated November 6, 1997 the petitioner has stated that most of the medical officers who have been treating the victims of the tragedy at Bhopal and who have acquired specialised knowledge relating to the ailments are being transferred from Bhopal to other places and this would not only have an adverse effect on the medical facilities that are available for treatment of the victims but will also affect the disposal of the claims of the claimants before the Deputy/Additional Welfare Commissioners because the evidence of those medical officers would not be available to the claimants. Shri A.K. Chitale, the learned senior counsel appearing for the State of Madhya Pradesh, prays for three weeks time to file a reply to the said averment contained in the affidavit. Time prayed for is allowed. In the meanwhile, no further transfer of the medical officers dealing with the ailments of the victims of the tragedy shall be made. In the said reply the State shall also explain the position regarding the working of the Pulmonary Medical Centre which is required to be set up at Bhopal.

5. Put up on December 5, 1997.

SCALE (PIL) 1981-97 1356

PUBLIC UNION FOR CIVIL LIBERTIES ETC. *Petitioners*

VS

STATE OF TAMIL NADU & ORS. ETC. *Respondents*

CORAM: J.S. VERMA AND S.P. BHARUCHA, JJ.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — Court notes that no

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Order dated May 13, 1994 in W.P. (C) No. 3922 of 1985 with W.P. (Crl.) No. 153 of 1982 with W.P. (C) No. 166 of 1995. [1997(7) SCALE (SP) 8]

significant progress has been made in the matter and considers it appropriate to issue certain detailed directions to all State Governments for prompt compliance.

1. We have heard Mr. Kapil Sibal, senior Advocate who appears at our request as Amicus Curiae in this matter as well as the other learned counsel appearing in this case. It does appear to us that no significant progress has been made by the concerned authorities and it is not unlikely that the attitude of the concerned authorities is not enthusiastic as one would expect in a matter of such significance. In these circumstances, we consider it appropriate to make certain directions for the prompt compliance of all the State Governments through their administrative machinery. Thus, the directions which are hereby given are as under:-

1) To identify the bonded labourers and update the existing list of such bonded labourers as well as to identify the villages where this practice is prevalent.
2) to identify the employers exploiting the bonded labourers and to initiate appropriate criminal proceedings against such employers.
3) to extinguish/discharge any existing debt and or bonded liability and to ensure them an alternative means of livelihood.
4) to appoint an independent body such as a local non-political social action group to collect independent information and details of:
    a) the prevalence of the exploitative practice of bonded labour and
    b) employers or their agents perpetrating the wilful violation of the law by encouraging and abetting the practice of bonded labour.
5) to provide employment to such bonded labour as agricultural workers at the prescribed minimum wages rate and/or provide the landless bonded labour with agricultural land, with a view to ensure an alternative means of livelihood.
6) to provide adequate shelter, food, education to the children of the bonded labourers and medical facilities to the bonded labourers and their families as part of a rehabilitation package.
7) to ensure :
    a) regular inspection by the concerned Labour Commissioner to keep the contractors who have in the past employed bonded labourers under watch.
    b) setting up of Vigilance Committees in each District
    c) the concerned District Magistrates to send quarterly reports to the Supreme Court Legal Aid Committee or to any Commissioner appointed by the court for this purpose.
    d) the setting up of rural credit facilities such as grameen banks, co-operatives etc. from which short term interest free loans can be availed without security, since the root cause of bonded labour seems to be the lack of availability of funds (credit through an institutional network)
8) to initiate criminal prosecution against the contractors/employers or their agents who engage bonded labour and employ children below the age of 14 without adequate monetary compensation by paying wages below the minimum wage rate, as prescribed under the Minimum Wages Act.
9) to initiate criminal prosecution against those employers, Contractors or their agents who make part payment of wages by way of Khesri Dal which is known to cause permanent disability - lathyrites.

2. With specific reference to the State of Madhya Pradesh this Hon'ble Court might consider the following additional directions:

- i) to provide data to this Hon'ble Court in respect of prosecutions launched against various employers already identified in proceedings before this Hon'ble Court as having employed bonded labourers in the context of Harwaha System.
- ii) to investigate and provide data to this Hon'ble Court in respect of the fate of those bonded labourers identified and allegedly freed from the Harwaha System.
- iii) to report the present extent of cultivation of Khesri dal within Rewa and Satna districts as well as such other districts in which it may also cultivated.
- iv) to report the steps taken by the State Government to prohibite the cultivation and consumption of Khesri dal.
- v) to report the fate of persons already identified as suffering from Lathyrites and the steps taken by the State Governments to provide free medical aid and facilities to such persons.
- vi) to provide the steps taken, if any, for the rehabilitation of bonded labourers freed from the Harwaha System and the rehabilitation of persons suffering from Lathyrites within the State of Madhya Pradesh."

3. All the State Governments should issue directions forthwith to the Collector and District Magistrate of each District for making the necessary compliance. We also direct that all the State Governments would file a detailed report supported by an affidavit of a Senior Officer indicating the manner and the extent to which these directions have been complied with and also indicating therein the programme drawn up for full implementation of these directions. The report of the State Governments should also contain the detailed information required to be furnished in accordance with these directions. These reports be filed by each State Government by the end of August, 1994. The matter be listed in the first week of September, 1994.

4. The Registry to ensure that a copy of this order is made available to each State Government through their standing counsel, in addition to Mr. Kapil Sibal, Senior Advocate and the other learned counsel appearing in this matter.

SCALE (PIL) 1981-97 1358

PUBLIC UNION FOR CIVIL LIBERTIES *Petitioner*

VS

STATE OF T.N. & ORS. *Respondents*

CORAM: J.S. VERMA, S.P. BHARUCHA AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — Affidavits filed by various State Governments in compliance with the directions of this Court — Court observes that none of the affidavits accepts the position that the evil of bonded labour still persists — Court issues further directions regarding verification of the present state of bonded labour in each state.

Order dated March 6, 1995 in W.P. (C) No. 3922 of 1985. with W.P. (Crl.) No. 153 of 1982 (Jyoti Prakash vs State of M.P.). [1997(7) SCALE (SP) 10]

1. Pursuant to the directions issued by this Court from time to time in these proceedings, affidavits have been filed by various State Governments pertaining to the measures taken by each of the State Governments to identify and check the practice of bonded labour and to rehabilitate those who are the victims of this practice.

2. The affidavits filed in compliance with the directions of this Court indicate that each of the State Governments have taken steps to seriously deal with the problem of bonded labour. None of the affidavits accepts the position that the evil of bonded labour still persists. If that be so, nothing further is required to be done by this Court.

3. We, however, feel that it would be in the fitness of things to be reassured that the practice of bonded Labour has *(sic)* fact been eradicated. With this *(sic)* each State a volantary organisation and an advocate who are requested to work in tandem, to do the following:

a) to verify in the State against which their names are identified.
   i) whether the facts as disclosed in the affidavit of the State represent the correct state of affairs;
   ii) whether the practice of bonded labour has actually been eradicated in the area or areas in which it is alleged to be prevalent, as disclosed in the petition; and
   iii) whether the measures as stated in the affidavits by the State Governments have been initiated and continued to be functional and operational

4. The names of the voluntary organisations and lawyer in respect of each of the State concerned are set out hereunder:

	ADVOCATE	VOLUNTARY ORGANISATION
1.	*Karnataka* Shri ....Reddy	Shri *(sic)*..................... *(sic)*...........................
2.	*Madhya Pradesh* Shri S.C. Chaturvdi Shri Ajay Singh	Shri Sharma Nand Gardia Janjagriti Kendra, Ward No.10 Raniesgarpara, Pithora, Raipur (M.P.) 493551
3.	*Kerala* Shri Jai Nambiar	Dr. E.P. Antony Etturuthil Eddappaly, P.O. Cochin - 682024
4.	*Andhra Pradesh* Shri Y. Ashok Raj	Prof. Vithal Rao Secretary, Arya Pratinidhi Sabha Arya Samaj, Sultan Bazar, Hyderabad.
5.	*Rajasthan* *(sic)*...................	*(sic)*........................... ....
6.	*Haryana* *(sic)*...................	Shri Jagbir Singh, Advocate President, *(sic)*...........................
7.	West Bengal Shri *(sic)*	Ms. Mahasweta Devi Shri Jay Saha Suit No.5 18 A Baliganj, Station Road Calcutta *(sic)*
8.	Bihar Shri *(sic)*	Shri Ram Murthy Sharma Bharat, Via Jamui Distt. Munger, Bihar,
9.	*Uttar Pradesh* Shri Mirza Mohd. Yusuff.	Dr. (Smt.) Suman, Bonded Liberation

		Front, Civil Lines, Robertsganj Sonebhadra District, (U.P.) 231 216
10. *Maharashtra*	Shri Nitin Jamdar	Shri Colin Gonsalves C/o Desai Singh People's Law Group Engineers House 86, Apollo Street Bombay 400 059
11. *Tamil Nadu*	Shri Siraj Sait	Dr. Felix Sugirtharaj, Secretary, Association for the Rural Poor, 59, East Mada Church Road *(sic)*
12. Gujarat	*(sic)*................	*(sic)*............................ Institute for Total Rev. Vedohhi, Surat, Gujarat - 394640
13. Meghalaya	Sh. Kalyan *(sic)*	Pargue Marak C/o Ms. Nur Marak Govt. Boy's High School Chandmari - Tura West Garo Hills Meghalaya.

5. We request the above-mentioned Advocates and voluntary Organisations to investigate the matters referred to by us hereinabove. This does not preclude any Advocate, Voluntary Organisation or any other person/organisation interested in the subject matter of these proceedings to forward any relevant information to and thereby, assist the above-mentioned Advocates and voluntary Organisations in the discharge of their duties as *(sic)*

6. It is possible that in the course of discharge of their functions in terms of this order the voluntary Organisations and the Advocates may require assistance from local administration. We direct that in the event, the local administration is approached by the concerned Advocate/ Voluntary Organisation for being given assistance in the discharge of their duties as *(sic)*

7. Each of the State Governments would be required to bear the costs as determined by us from time to time to enable the voluntary Organisations/ Advocates to discharge their functions in terms of the orders of this Court.

8. We request Shri Gopal Jain, as Advocate of this Court and Prof. Sheotaj Singh, General Secretary, Bandua Mukti Morcha, to coordinate the efforts of the Advocates and voluntary Organisations and submit to us a report within six months from to-day. The Voluntary Organisations/ Advocates are requested to correspond *(sic)* Shri Gopal Jain and Prof. Sheotaj Singh, General Secretary, Bandua Mukti Morcha, in respect of any terms connected with the discharge of their functions *(sic)* to of this order.

9. Copy of this order be served on the Standing Counsel of all the States concerned before this Court and the Chief Secretary of each of the concerned states.

10. If further directions of this Court are required for effective implementation of this order or for seeking any clarifications, liberty is granted to Shri Kapil Sibal, Amicus Curiae, to move this Court, if the need so arises.

11. *(sic)* 1995.

SCALE (PIL) 1981-97 1361

PUBLIC UNION FOR CIVIL LIBERTIES *Petitioners*

VS

STATE OF TAMIL NADU AND ORS. *Respondents*

CORAM: J.S. VERMA, CJI AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — Court observes that some States have still not filed their affidavits — Further Line of Action suggested by U.O.I. — Constitution of Vigilance Committees at district as well as sub-divisional levels — Court grants further time for compliance.

1. Some of the States have not complied with the direction given earlier to file the affidavit. This should be done positively within six weeks from now.

2. The learned Solicitor General has stated in writing the further line of action suggested by the Government of India for compliance by the State Governments. The same is taken on record. Copies of the same be given to learned counsel for the State Governments. *Prima facie*, it appears to us that the suggestions given by the Government of India are appropriate and are meant to ensure the constitution and effective functioning of the Vigilance committees and the other concerned authorities for implementation of the law relating to the bonded labour. It is expected that the State Governments make the necessary compliance and they are also required to file their response, if any, to the suggestions made by the Government of India within six weeks.

3. In respect of the States which have already filed their affidavits, further action taken by them in the meantime be also indicated by filing further affidavits. All this be completed within six weeks.

4. List on 4th August, 1997.

Further Line of Action suggested by Government of India

A wide difference in perception of the State Governments and those of the Commissioners appointed by the Court suggests that the enforcement machinery of the State Governments has not been active and has not been giving adequate attention to this problem which continues to exist more than 20 years after being banned under the law. It is obvious that the State Governments and their officers need to be adequately sensitised to this social evil and duly activated. For doing this, the State Governments need to take action on following lines:-

1. Even though the Act provides for constitution of vigilance Committees under Section 13 at the district as well as the sub-divisional levels, it is obvious that these Committees are not functioning effectively. It is imperative that these Committees should be activated and should meet regularly with due seriousness. For ensuring that the State Governments may make periodic meetings of these Committees compulsory instead of leaving the option of convening the meetings with the local conveners. In any case the frequency of such meetings should not be less than once in two months.
2. The District Magistrates and the Sub-Divisional Magistrates should personally participate in these meetings and not be represented by other functionaries.

Order dated May 5, 1997 in W.P. (C) No. 3922/85 with W.P. (Crl.) No. 153/82, W.P. (C) No. 166/95, SLP (C) No. 9795/96.[1997(7) SCALE (SP) 13]

3. The non-official members of these Committees should be selected not for extending political patronage but on the basis of track record of social work taking into account their commitment and sensitivity to social issues in general and to the issue of bonded labour in particular.
4. Under the overall supervision of these Committees an intensive door to door Survey should be carried out to identify and enumerate the bonded labourers who may still be in bondage. Such Surveys need not be confined to Government machinery. Help of bonafide social workers and NGOs should be taken wherever possible.
5. Such Surveys should be undertaken at least once in a year so that any new cases of bondage can be detected early and without delay.
6. On detection of such cases of bondage, immediate action for release of the bonded labourer and his or her rehabilitation should be taken and the same should be supervised by the District Magistrates personally. Under Section 21 of the Bonded Labour System (Abolition) Act, an executive magistrate is to be appointed & vested with powers of a judicial magistrate for summary trial of all cases under the Act. He/she is also required to release the bonded labourer(s) & issue a release certificate.
7. For the purpose of rehabilitation of bonded labourers, apart from assistance available under the centrally sponsored scheme, assistance from other welfare and poverty alleviation schemes should also be ensured through due convergence of all such schemes and programmes. Convergence in this sense would mean pooling resources from a variety of sources & integrating the same imaginatively & skillfully to achieve the objective of a qualitative rehabilitation.
8. Even at the State Government level, this programme is not getting due priority. It is felt that the existing arrangement for monitoring the programme at the State level needs considerable improvement and strengthening. A Committee headed by the Chief Secretary comprising of other concerned Secretaries like Secretary (Home), Secretary (Finance), Secretary (Planning), Secretary (Labour), Secretary (Rural Development), Secretary (Agriculture), Secretary (Animal Husbandry), Secretary (Revenue), Secretary (Women & Child Development), Secretary (Health & Family Welfare), Secretary (Education), Secretary Incharge of Tribal Development and SC/ST Programmes and such other officers, who may directly or indirectly be concerned with this work, should be constituted. The mandate of the Committee will be as follows:
   - to review the arrangements for conducting door to door surveys for identification and enumeration of bonded labour;
   - to review the arrangements for collection and compilation of data on the basis of survey;
   - to review the pace of release of bonded labourers under Section 21 of the Act and issue of release certificate;
   - to review the pace of implementation of rehabilitation efforts;
   - to ensure that lapse back to bondage is prevented;
   - to attend to public complaints and grievances and the pace of their

disposal at various levels.

9. There is need for total attitudinal change in the State Governments on this issue. Instead of brushing aside the problem under the carpet, at least at the State level, the reality should be accepted and sincere and committed efforts should be made for effectively tackling the problem. State Governments must devise methods for conveying to the District Magistrates and other field staff their seriousness and commitment on this issue.
10. The above State level committee may meet at least once a quarter and review the progress under the programme. This item should also be made a standing item on Agenda of the periodic meetings of District Magistrates called for review of issues like law and order, implementation of development scheme, etc.
11. Chief Ministers and their Cabinet Colleagues, Chief Secretaries and other senior officers in the State Secretariat should encourage flow of information on this subject through non-official channels so that correct and proper picture of the situation on the ground is available with the State Government. The State Government's total reliance for information on extent and magnitude of this evil, on officers who are themselves responsible for tackling the issue is unfortunate and needs to be changed.

SCALE (PIL) 1981-97 1363

PUBLIC UNION FOR CIVIL LIBERTIES *Petitioner*

VS

STATE OF TAMIL NADU & ORS. *Respondents*

CORAM: J.S. VERMA, CJI AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — Filing of affidavits by those State Governments who have not done so far — Court grants last opportunity failing which the appropriate direction required to be made for ensuring compliance of this Court's direction would be given on the next date.

1. We are informed that some States have not yet filed the affidavits which are required to be filed by them as per our earlier directions. They must do so definitely within 3 weeks hereafter, failing which the appropriate direction required to be made for ensuring compliance of this Court's direction would be given on the next date. The learned Solicitor General wants some time to ascertain the further steps taken by the Central Government and the State Governments in this behalf.

2. The Registry must take steps to furnish affidavits and any other documents filed in the case to the learned Solicitor General and **Amicus** Curiae and Mr. Gopal Jain, adv., who is assisting the amicus curiae within three days of the same being filed.

3. List on 15.9.1997.

Order dated August 4, 1997 in W.P. (C) No. 3922/85 with W.P. (Crl.) No. 153/82, W.P. (C) No. 166/95, SLP (C) No. 9795/96. [1997(7) SCALE (SP) 15]

SCALE (PIL) 1981-97 1364

PUBLIC UNION FOR CIVIL LIBERTIES *Petitioners*

VS

STATE OF TAMIL NADU AND ORS. *Respondents*

CORAM: J.S. VERMA, CJI AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — Declaration on Elimination of Bonded Labour adopted at the National Convention on Bonded Labour and Child Bondage organised by the Government of Tamil Nadu and Campaign for the Abolition and Rehabilitation of Bonded Labour (CAREBOLA), with the active support of the Ministry of Labour, Government of India at Chennai on August 20 and 21, 1997 — Court directs all the State Governments to file their comments thereto and the further action taken in that direction within four weeks furnishing copies thereof to learned Solicitor General and Amicus Curiae.

1. We find that inspite of our earlier orders many State Governments have not yet made full compliance of those orders by filing the requisite response after the order dated 5th May, 1997.

2. Sh. Ganguli, learned Amicus Curiae has also produced a Declaration on Elimination of Bonded Labour adopted at the National Convention on Bonded Labour and Child Bondage organised by the Government of Tamil Nadu and Campaign for the Abolition and Rehabilitation of Bonded Labour (CAREBOLA), with the active support of the Ministry of Labour, Government of India at Chennai on August 20 and 21, 1997. All the State Governments are required to file their comments thereto and the further action taken in that direction. This be done by all the State Governments within four weeks furnishing copies thereof to learned Solicitor General and Amicus Curiae. The learned Solicitor General will have three weeks thereafter to examine the same.

3. The bills of expenses incurred by the local commissioners appointed by the Court, which have been submitted in the Registry, may be perused by the learned Solicitor General and thereafter the amount indicated by the learned Solicitor General be paid by the Registry to the local commissioners.

4. Learned Advocate General for the State of Tamil Nadu admits that there are a large number of bonded labours in the State of Tamil Nadu but he is unable to mention the exact figure even though the NGOs appointed by the State Government have identified about 25,000 bonded labourers. The State of Tamil Nadu is required to file an affidavit regarding the steps taken by it after identification of the bonded labour in this direction.

5. A list of 160 bonded labourers identified in Haryana (Charkhi Dadri, Bhiwani District) who have been released and sent back to Madhya Pradesh, has been given to the learned counsel for the State of Haryana for taking the necessary steps for issuing the release certificates. Learned counsel for the State of Haryana states that necessary steps for verification and issuance of requisite certificates would be taken soon.

6. List on 10th November, 1997.

Order dated September 15, 1997 in W.P. (C) No. 3922/85. with W.P. (Crl.) No. 153/82, W.P. (C) No. 166/95, SLP (C) No. 9795/96 W.P. (C) No. 380/96. [1997(7) SCALE (SP) 16]

SCALE (PIL) 1981-97 1365

PEOPLE'S UNION FOR CIVIL LIBERTIES *Appellant*

VS

STATE OF A.P. & ANR. *Respondents*

CORAM: O. CHINNAPPA REDDY AND E.S. VENKATARAMIAH, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CRIMINAL LAW — Cr.P.C. — SECTION 190(1)(c) — Magistrate not taking cognizance of the offence and instead holding a preliminary enquiry — Disposing of the appeal, Held,

A. It is not doubted that the Magistrate who receives information about the commission of an offence has no jurisdiction to hold a preliminary enquiry, as it were, for the purpose of taking cognizance under S. 190(1)(c). (Para 2).

B. However, this was not a case where the High Court should have stopped with the quashing of the proceeding. The High Court should have given further directions as to how the matter should be dealt with. (Para 2).

C. The Court, in the circumstances of the case, directed the learned Magistrate to take cognizance of the offence and make over the case to the Chief Judicial Magistrate under S. 190(1)(c) of the Code of Criminal Procedure (Para 2).

1. Special leave granted.

2. The Medical Officer, Government hospital, Proddatur sent information to the First Class Magistrate, Proddatur that one K. Subbarayudu who had been sent to the hospital from the police lock-up with serious injuries, had died in the hospital. Thereupon, the learned Magistrate instead of straightaway taking cognizance of the offence under s. 190 (1)(c) of Code of Criminal Procedure issued summons to the Sub-Inspector of Police and others for the purpose of holding an enquiry in order to determine whether cognizance should be taken or not. After the proceeding was kept pending for some time, the Sub-Inspector of Police moved the High Court to quash the proceeding on the ground that the Magistrate did not have the jurisdiction to hold any enquiry for the purpose of taking cognizance under s. 190(1)(c). The High Court accepted the contention of the police officer and quashed the proceeding pending before the Magistrate. While we do not doubt that the Magistrate who receives information about the commission of an offence has no jurisdiction to hold a preliminary enquiry, as it were, for the purpose of taking cognizance under s. 190(1)(c), we do not think that this is a case where the High Court should have stopped with the quashing of the proceeding. The High Court should have given further directions as to how the matter should be dealt with. In the circumstances of the case we think that the most appropriate course was to direct the learned Magistrate to take cognizance of the offence and make over the case to the Chief Judicial Magistrate under s. 190(1)(c) of the Code of Criminal Procedure. We so order. The appeal is disposed of accordingly.

Order dated January 9, 1986 in Cr.A. No. 45 of 1986 (Arising out of SLP (Crl.) No. 701 of 1983). [1986(1) SCALE 321]

SCALE (PIL) 1981-97 1366

PEOPLE'S UNION FOR CIVIL LIBERTIES (PUCL) *Petitioner*

VS

UNION OF INDIA AND ANOTHER *Respondents*

CORAM: B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CRIMINAL LAW — Allegation that two persons were killed in fake encounter with police — Petitioner version disputed in counter affidavit filed on behalf of State of Manipur — Court directs District and Sessions Judge, Churachandpur, State of Manipur to make an enquiry into the incident and submit a report within six months.

B.P. Jeevan Reddy, J.— This writ petition under Article 32 of the Constitution is filed by the People's Union for Civil Liberties (PUCL) for the issuance of an appropriate direction instituting a judicial enquiry to enquire into the incidents mentioned in the writ petition and to further direct the respondents (Union of India and State of Manipur) to take action against the erring police officer. A direction for awarding compensation to the members of the family of the deceased is also prayed for.

2. The petitioner says that on 3rd April, 1991 a fake encounter was staged by the Imphal District Police in Lunthilian Village in Churachandpur District wherein two persons. viz., Lalbeiklien s/o Thatngur of Lunthilian Village and Saikaplien, s/o Tenga of Tingbum Village of Mizoram were killed. It is alleged that a false FIR was lodged by the District Police at Imphal Police Station at 4.30 p.m. on 4.4.1991 wherein it was alleged that on receipt of reliable information to the effect that some hardcore leaders of the Hamar People's Convention (HPC) were camping at Lunthilian Village, they rushed to the village on 3.4.91 and that when they reached the village at about 11.00 p.m. on that day, they were fired upon by the members of the HPC. It was alleged that in the exchange of fire, the two aforesaid persons died while three others were apprehended. It was also stated that the police recovered a.22 country revolver with seven round of ammunition, a cash amount of Rs. 1,213/- and a large number of incriminating documents. It is stated by the petitioner in the writ petition that the above version of the police is strongly denied by the relatives of the said deceased persons. According to them, no encounter as such took place in the village and not a single shot was fired. According to them, the said two deceased persons were taken away by the police and killed in a cold-blooded manner and that this version is corroborated by villagers who were present when the said persons were taken away and also from the various reports appearing in the local and national media. According to the petitioner further the true case is that the Police came to the village at about 9.30 p.m. on that day and took away five persons including the two deceased. They took away the Chairman of the Village also with them, but he was let-off on the outskirts of the village. Remaining five persons were taken away in a truck after blind-folding them. At about 2.00 p.m. on 4.4.91, i.e., after travelling for about 16 hours and after crossing the Lanva Bridge which is about 5 km. from Churachandpur, the two deceased were called by the police and taken away from

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Judgment dated March 30, 1995 in W.P. (Crl.) No. 612 of 1992. [1995(2) SCALE 542] the truck. They were taken to some distance and shot there. The remaining three persons in the truck heard the gunshots. Subsequently, the dead bodies were dumped in the truck and taken to Imphal where the other three persons were kept in the Imphal Police Station for four days. Then they were taken to Churachandpur Police Station and were kept there for about 9 days. They were then brought back to Imphal Police Station and lodged in the Imphal Central Jail. Ten days later they were taken to Mizoram where they were released on bail on 22.7.1991. The affidavits of two of the said three persons, viz., Remthang and Lalsansuot, sworn before the Judicial Magistrate, I Class on 20th August, 1991, are filed alongwith the writ petition. Affidavits of villagers and wives of the deceased are also filed in support of the above version. The writ petition then sets out, what it calls, the serious lacunae, irregularities and inconsistencies in the version put forward by the police, *vide* para 7 of the writ petition.

3. On 13th November, 1992 this Court issued notice to the respondents in this writ petition returnable within six weeks. A counter-affidavit has been filed on behalf of the second respondent (State of Manipur) sworn to by Shri Kh. Mohendro Singh, Joint Secretary (Home) Government of Manipur. He has denied the several averments in the writ petition and has affirmed the version put forward in the FIR as the true one. Alongwith the counter-affidavit, copies of post-mortem reports relating to the said two deceased persons are filed.

4. A rejoinder has been filed on behalf of the petitioner denying the averments in the counter affidavit and reiterating the statements made in the writ petition. Although the rejoinder some more affidavits have been filed.

5. It would be evident from a perusal of the pleadings that there is a serious dispute as to relevant facts. One of the aspects stressed by Shri Rajender Sachar, learned senior advocate for the petitioner is that according to the post-mortem report filed by the respondents, not only the entry point of all the bullets is in the back of the deceased, there is blackening, tattooing and scrooting in respect of one of the bullet entry points pertaining to Beiklin. The learned counsel submits that the said circumstance support the petitioner's case that the said deceased were shot from behind and at a close range.

6. The learned counsel for the respondent, however, disputes the correctness of the said submission.

7. In view of the aforesaid two contradictory versions, we think it appropriate in the facts and circumstances of the case that an enquiry is made by the learned District and Sessions Judge, Churachandpur, State of Manipur into the said incident. The learned District Judge shall record the evidence of the relevant witnesses and submit a report to this Court within six months. To enable the learned District Judge to appreciate the facts of the case and also to enable him to identify the witnesses to be summoned, copies of writ petition, counter and rejoinder alongwith the enclosed documents and affidavits shall be forwarded to him. The learned District Judge shall examine the deponents of the said affidavits, if they are available and willing to come forward to give evidence, and all such persons as he thinks appropriate in the circumstances and make his report.

8. It is obvious that before commencing the enquiry, the learned District Judge shall send notices to the petitioners as well as the respondents.

9. List after the receipt of the report from the learned District Judge, Churachandpur, Manipur.

SCALE (PIL) 1981-97 1368

PEOPLE'S UNION FOR CIVIL LIBERTIES (PUCL) *Petitioner*

VS

THE UNION OF INDIA AND ANOTHER *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ABUSE OF POWER — TELEPHONE TAPPING — CONSTITUTION — ARTICLE 19(1)(a) — INDIAN TELEGRAPH ACT, 1885 — SECTION 5(2) — Validity of — Held, Telephone tapping, unless it comes within the grounds of restrictions under Article 19(2) would infract Article 19(1)(a) of the Constitution — Court issued directions as to the manner in which an order for telephone tapping in terms of Section 5(2) of the Act should be issued.

Referred: Kharak Singh vs The State of U.P. & Ors, (1964) 1 SCR 332; Govind vs State of Madhya Pradesh, (1975) 2 SCC 148; R.Rajagopal alias R.R.Gopal and Another vs State of Tamil Nadu, (1994) 6 SCC 632; Jolly George Varghese vs Bank of Cochin, AIR 1980 SC 470; Kesavananda Bharathi vs State of Kerala, (1973) Supp. SCR 1; Hukam Chand Shyam Lal vs Union of India & Ors, 1976 (2) SCC 128; Maneka Gandhi vs Union of India, (1978) 2 SCR 621.

Kuldip Singh, J.— Telephone- Tapping is a section invasion of an individual's privacy. With the growth of highly sophisticated communication technology, the right to hold telephone conversation, in the privacy of one's home or office without interference, is increasingly susceptible to abuse. It is no doubt correct that every Government, however democratic, exercises some degree of subrosa as a part of its intelligence out-fit but at the same time citizen'z right to privacy has to be protected from being abused by the authorities of the day.

2. This petition- public interest- under Article 32 of the Constitution of India has been filed by the People's Union of Civil Liberties, a voluntary organisation, high lighting the incidents of telephone tapping in the recent past. The petitioner has challenged the constitutional validity of Section 5(2) of the Indian Telegraph Act, 1885 (the act), in the alternative it is contended that the said provisions be suitably read-down to include procedural safeguards to rule out arbitrariness and to prevent the indiscriminate telephone-tapping.

4. The writ petition was filed in the wake of the report on "Tapping of politicians phones" by the Central Bureau of Investigation (CBI). Copy of the report as published in the "mainstream" volume XXIX dated March 26, 1991 has been placed on record along with the rejoinder filed by the petitioner. The authenticity of the report has not been questioned by the learned counsel for the Union of India before us. Para 21 and 22 of the report are as under :-

> "21. Investigation has revealed the following lapses on the part of MTNL
>
> i) In respect of 4 telephone numbers though they were shown to be under interception in the statement supplied by MTNL, the authorisation for putting the number under interception could not be provided. This shows that records have not been maintained properly.
>
> ii) In respect of 279 telephone numbers, although authority letters from various authorised agencies were available, these numbers have not been shown in list supplied by MTNL showing interception of telephones to the corresponding

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Judgment dated December 18, 1996 in W.P. (C) No. 256 of 1991. [1996(9) SCALE 318] period. This shows that lists supplied were incomplete.

iii) In respect of 133 cases, interception of the phones were done beyond the authorised part. The GM (o), MTNL in his explanation has said that this was done in good faith on oral requests of the representatives of the competent authorities and that instructions have now been issued that interception beyond authorised periods will be done only on receipt of written requests.

iv) In respect of 111 cases, interception of telephones have exceeded 180 days period and no permission of Government for keeping the telephone under interception beyond 180 days was taken.

v) The files pertaining to interception have not been maintained properly.

22. Investigation has also revealed that various authorised agencies are not maintaining the files regarding interception of telephones properly. One agency is not maintaining even the log books of interception. The reasons for keeping a telephone number on watch have also not been maintained properly. The effectiveness of the results of observation have to be reported to the Government in quarterly returns which is also not being sent in time and does not contain all the relevant information. In the case of agencies other than I.B., the returns are submitted to the MHA. The periodicity of maintenance of the records is not uniform. It has been found that whereas DRI keeps record for the last 5 years, in case of I.B., as soon as the new quarterly statement is prepared, the old returns are destroyed for reasons of secrecy. The desirability of maintenance of unit-return and periodicity of these documents needs to be examined.

Section 5(2) of the Act is as under:-

"5(2) - On the occurrence of any public emergency, or in the interest of public safety, the Central Government or a State Government or any Officer specially authorised in this behalf by the Central Govt. or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section".

5. The above provisions clearly indicate that in the event of the occurrence of a public emergency or in the interest of public safety the Central Government or the State Government or any officer specially authorised in this behalf, can intercept messages if satisfied that it is necessary or expedient so to do in the interest of:-

(i) The sovereignty and integrity of India.
(ii) The security of the State.
(iii) Friendly relations with foreign states.
(iv) Public order.
(v) For preventing incitement to the commission of an offence.

6. The CBI report indicates that under the above provisions of law Director Intelligence Bureau, Director General Narcotics Control Bureau, Revenue Intelligence and Central Economic Intelligence Bureau and the Director Enforcement Directorate have been authorised by the Central Government to do interception for the purposes indicated above. In addition, the State Governments generally give authorisation to the Police/Intelligence agencies to exercise the powers under the Act.

7. The Assistant Director - General, Department of Telecom has filed counter affidavit on behalf of the Union of India. The stand taken by the Union of India is as under :-

> "The allegation that the party in power at the Center/State or officer authorised to tap the telephone by the Central/State Government could misuse this power is not correct. Tapping of telephone could be done only by the Central/State Government order by the Officer specifically authorised by the Central/State Government on their behalf and it could be done only under certain conditions such as National Emergency in the interest of public safety, security of State, public order etc. It is also necessary to record the reasons for tapping before tapping is resorted to. If the party, whose telephone is to be tapped is to be informed about this and also the reasons for tapping, it will defeat the very purpose of tapping of telephone. By the very sensitive nature of the work, it is absolutely necessary to maintain secrecy in the matter. In spite of safeguards, if there is alleged misuse of the powers regarding tapping of telephones by any authorised officer, the aggrieved part could represent to the State Government/Central Government and suitable action could be taken as may be necessary. Striking down the provision Section 5(2) of the Indian Telegraph Act, is not desirable as it will jeopardise public interest and security of the State".

Section 7 (2)(b) of the Act which gives rule making power to the Central Government is as under :-

> "7. Power to make rules for the conduct of telegraphs — (1) The Central Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the conduct of all or any telegraphs, established, maintained or worked by the Government or by persons licensed under this Act.
>
> (2) Rules under this section may provide for all or any of the following, among other matters, that is to say:-
>
> (a) xx xx
>
> (b) the precautions to be taken for preventing the improper interception or disclosure of message".

8. No rules have been framed by the Central Government under the provisions quoted above.

9. Mr. Rajinder Sachar, Sr. Advocate assisted by Mr. Sanjay Parikh vehemently contended that right to privacy is a fundamental right guaranteed under Article 19(1) and Article 21 of the Constitution of India. According to Mr. Sachar to save Section 5(2) of the Act from being declared unconstitutional it is necessary to read-down the said provision to provide adequate machinery to safeguard the right to privacy. Prior judicial sanction - ex-parte in nature - according to Mr. Sachar, is the only safeguard, which can eliminate the element of arbitrariness or unreasonableness. Mr. Sachar contended that not only the substantive law but also the procedure provided therein has to be just, fair and reasonable.

10. While hearing the arguments on September 26, 1995, this Court passed the following order:

> "Mr. Parikh is on his legs. He has assisted us in this matter for about half an hour. At this stage, Mr. Kapil Sibal & Dr. Dhawan, who are present in Court, stated that according to them the matter is important and they being responsible members of the Bar, are duty bound to assist this Court in a matter like this. We appreciate the gesture. We permit them to intervene in this matter. They need a short adjourment to assist us.
>
> The matter is adjourned to October 11, 1995".

11. While assisting this Court Mr. Kapil Sibal at the outset stated that in the interest of the security and sovereignty of India and to deal with any other emergency situation for the protection of national interest, messages may indeed be intercepted. According to him the core question for determination is whether there are sufficient procedural safeguards to rule our arbitrary exercise of power under the Act. Mr. Sibal contended that Section 5(2) of the Act clearly lays down the conditions/situations which are sine qua non for the exercise of the power but the manner in which the said power can be exercised has not been provided. According to him procedural safeguards - short of prior judicial scrutiny - shall have to be read in Section 5(2) of the Act to save it from the vice of arbitrariness.

12. Both sides have relied upon the Seven-Judge Bench judgment of this Court in *Kharak Singh vs. The State of U.P. & Ors.* (1964) 1 SCR 332. The question for consideration before this Court was whether "surveillance" under Chapter XX of the U.P. Police Regulations constituted an infringement of any of the fundamental rights guaranteed by Par III of the Constitution. Regulation 236(b) which permitted surveillance by "domicilliary visits at night" was held to be violative of Article 21 on the ground that there was no "law" under which the said regulation could be justified.

13. The word "life" and the expression "personal liberty" in Article 21 were elaborately considered by this Court in *Kharak Singh's* case. The majority read "right to privacy" as part of the right to life under Article 21 of the Constitution on the following reasoning:

> "We have already extracted a passage from the judgment of Field, J. in *Munn v. Illinois* (1877) 94 U.S. 113, 142, where the learned Judge Pointed out that "Life" in the 5th and 14th Amendments of the U.S. Constitution corresponding to Art. 21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs-his arms and legs etc. We do not entertain any doubt that the word "life" in Art. 21 bears the same signification. Is then the word "personal liberty" to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to "assure the dignity of the individual" and therefore of those cherished human value as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concepts underlying the constitution which would point to such vital words as "personal liberty" having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of

the phrase to square with any preconceived notions or doctrinaire constitutional theories. Frankfurter, J. observed in *Wolf v. Colorado* (1949) 338 US 25:

> "The security of one's privacy against arbitrary intrusion by the police.... is basic to a free society. It is therefore implicit in `the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples... We have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment."

Mruphy, J. considered that such invasion was against "the very essence of a scheme of ordered liberty".

It is true that in the decision of the U.S. Supreme Court from which we have made these extracts, the Court had to consider also the impact of a violation of the Fourth Amendment which reads.

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

and that our constitution does not in terms confer any like constitutional guarantee. Nevertheless, these extracts would show that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man - an ultimate essential of ordered liberty, if not of the very concept of civilisation. An English Common Law maxim asserts that "every man's house is his castle" and in *Semayne's* case (1604) 5 Coke 91, where this was applied, it was stated that "the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose". We are not unmindful of the fact that *Semayne's* case was concerned with the law relating to executions in England, but the passage extracted has a validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a concept of "personal liberty" which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value.

In our view cl. (b) of Regulation 236 is plaintly violative of Art. 21 and as there is no "law" on which the same could be justified it must be struck down as unconstitutional."

14. Subba Rao, J. (as the learned Judge then was) in his minority opinion also came to the conclusion that right to privacy was a part of Article 21 of the Constitution but went a step further and struck down Regulation 236 as a whole on the following reasoning:

> "Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution

does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle": it is his rampart against encroachment on his personal liberty. The pregnant words of that famous Judge, Frankfurter J.,. in *Wold v. Colorado* (1949) 338 US 25, pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no-less application to an Indian home as to an American one. If physical restraints on a person's movements affect his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Art. 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. If so understood, all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Art. 21 of the Constitution."

15. Article 21 of the Constitution has, therefore, been interpreted by all the seven learned Judges in *Kharak Singh's* case (majority and the minority opinions) to include that "right to privacy" is a part of the right to "protection of life and personal liberty" guaranteed under the said Article.

16. In *Govind vs State of Madhya Pradesh* (1975) 2 SCC 148, a three-Judge Bench of this Court considered the constitutional validity of Regulations 855 and 856 of the Madhya Pradesh Police Regulations which provided surveillance by way of several measures indicated in the said regulations. This Court upheld the validity of the regulations by holding that Article 21 was not violated because the impugned regulations were "procedure established by law" in terms of the said article.

17. In *R. Rajagopal alias R.R. Gopal and another vs. State of Tamil Nadu* (1994) 6 SCC 632, Jeevan Reddy, J. speaking for the Court observed that in recent times right to privacy has acquired constitutional status. The learned Judge referred to *Kharak's case, Govind's case* and considered a large number of American and English cases and finally came to the conclusion that "the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters".

18. We have, therefore, no hesitation in holding that right to privacy is a part of the right to "life and "personal liberty" enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy, Article 21 is attracted. The said right cannot be curtailed "except according to procedure established by law".

19. The right to privacy - by itself - has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of ones home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone-conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.

20. Right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution. This freedom means the right to express ones convictions and opinions freely by word of mouth, writing, printing, picture, or in any other manner. When a person is talking on telephone, he is exercising his right to freedom of speech and expression. Telephone-tapping unless it comes within the grounds of restrictions under Article 19(1) would infract Article 19(1)(a) of the Constitution.

21. India is a signatory to the International Covenant on Civil and Political Rights, 1966. Article 17 of the said covenant is as under:-

> "*Article 17*
>
> 1. No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondence, nor to lawful attacks on his honour and reputation.
>
> 2. Every one has the right to the protection of the law against such interference or attacks."

Article 12 of the Universal Declaration of Human Rights, 1948 is almost in similar terms.

22. International law today is not confined to regulating the relations between the States. Scope continues to extend. Today matters of social concern, such as health, education and economics apart from human rights fall within the ambit of International Regulations. International law is more than ever aimed at individuals.

23. It is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law.

24. Article 51 of the Constitution directs that the State shall endeavour to inter alia, foster respect for international law and treaty obligations in the dealings of organised peoples with one another. Relying upon the said Article, Sikri, C.J. in *Kesavananda Bharathi vs. State of Kerala* (1973) Supp. SCR 1 observed as under:-

> "it seems to me that, in view of Article 51 of the directive principles, this Court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and the solemn declaration subscribed to by India."

In *A.D.M. Jabalpur vs. S. Shukla* Khanna J. in his minority opinion observed as under:-

> "Equally well established is the rule of construction that if there be a conflict between the municipal law on one side and the international law or the provisions of any treaty obligations on the other, the Courts would give effect to municipal law. If, however, to construction of the municipal law are possible, the Courts should lean in favour of adopting such construction as would make the provisions of the municipal law to be in harmony with the international law on treaty obligations. Every statute, according to this rule is interpreted, so far as its language permits, so as not to be inconsistent with the comity of nations on the established rules of international law, and the Court will avoid a construction which would give rise to

> such inconsistency unless compelled to adopt it by plain and unambiguous language."

In *Jolly George Varghese vs. Bank of Cochin* AIR 1980 SC 470, Krishna Iyer, J. posed the following question:-

> "From the perspective of international law the question posed is whether it is right to enforce a contractual liability by imprisoning a debtor in the teeth of Article 11 of the International Covenant on Civil and Political Rights. The Article reads:
>
> No one shall be imprisoned merely *on the ground of inability to fulfil a contractual obligation.*"

The learned Judge interpreted Section 51 of the Code of Civil Procedure consistently with Article 11 of the International Covenant.

25. Article 17 of the International Covenant - quoted above - does not go contrary to any part of our Municipal law. Article 21 of the Constitution has, therefore, been interpreted in conformity with the international law.

26. Learned counsel assisting us in this case have not seriously challenged the constitutional vires of Section 5(2) of the Act. In this respect it would be useful to refer to the observations of this Court in *Hukam Chand Shyam Lal vs. Union of India & Ors.* 1976 (2) SCC 128:-

> "Section 5(1) if properly construed, does not confer unguided and unbridled power on the Central Government/State Government/specially authorised officer to take possession of any telegraph. Firstly, the occurrence of a "public emergency" is the sine qua non for the exercise of power under this section. As a preliminary step to the exercise of further jurisdiction under this section the Government or the authority concerned must record its satisfaction as to the existence of such an emergency. Further, the existence of the emergency which is a pre-requisite for the exercise of power under this section, must be a `public emergency' and not any other kind of emergency. The expression `public emergency' has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section which has to be read as a whole, in sub-section (1) the phrase `occurrence of any public emergency' is connected with and is immediately followed by the phrase "or in the interests of the public safety". These two phrases appear to take colour from each other. In the first part of sub-section (2) those two phrases again occur in association with each other, and the context further clarifies with amplification that a `public emergency' within the contemplation of this section is one which raises problems concerning the interest of the public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or the prevention of incitement to the commission of an offence. It is in the context of these matters that the appropriate authority has to form an opinion with regard to the occurrence of a `public emergency' with a view to taking further action under this section. Economic emergency is not one of those matters expressly mentioned in the statute. Mere `economic emergency' - as the High Court calls it - may not necessarily amount to a `public emergency' and justify action under this section unless it raises problems relating to the matters indicated in the section."

27. As mentioned above, the primary contention raised by the learned counsel is to lay-down necessary safe-guards to rule-out the arbitrary exercise of power under the Act.

28. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said Section. "Occurrence of any public emergency" or "in the interest of public safety" are the sine qua non for the application of the provisions of Section 5(2) of the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires. Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person.

29. The first step under Section 5(2) of the Act, therefore, is the occurrence of any public emergency or the existence of a public-safety interest. Thereafter the competent authority under Section 5(2) of the Act is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient so to do in the interest of (i) sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order or (v) for preventing incitement to the commission of an offence. When any of the five situations mentioned above to the satisfaction of the competent authority require then the said authority may pass the order for interception of messages by recording reasons in writing for doing so.

30. The above analysis of Section 5(2) of the Act shows that so far the power to intercept messages/conversations is concerned the Section clearly lays-down the situations/conditions under which it can be exercised. But the substantive law as laid down in Section 5(2) of the Act must have procedural backing so that the exercise of power is fair and reasonably. The said procedure itself must be just, fair and reasonable. It has been settled by this Court in *Maneka Gandhi vs. Union of India* (1978) 2 SCR 621, that "procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself". Thus, understood, "procedure" must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised processes."

31. We are of the view that there is considerable force in the contention of Mr., Rajinder Sachar, Mr. Kapil Sibal and Dr. Rajiv Dhawan that no procedure has been prescribed for the exercise of the power under Section 5(2) of the Act. It is not disputed that no rules have been framed under Section 7(2)(b) of the Act for providing the precautions to be taken for preventing the improper interception or disclosure of messages. In the absence of just and fair procedure for regulating the exercise of power under Section 5(2) of the Act, it is not possible to safeguard the rights of the citizens guaranteed under Articles 19(1)(a) and 21 of the Constitution of India. The CBI investigation has revealed several lapses in the execution of the orders passed under Section 5(2) of the Act. Paras 21 and 22 of the report have already been quoted in the earlier part of this judgment.

32. The Second Press Commission in paras 164, 165 and 166 of its report has commented on the "tapping of telephones" as under:-

> "Tapping of Telephones
>
> 164. It is felt in some quarters, not without reason, that not infrequently the Press in general and its editorial echelons in particular have to suffer tapping of telephones.
>
> 165. Tapping of telephones is a serious invasion of privacy. It is a variety of technological eavesdropping. Conversations on the telephone are often of an intimate and confidential charter. The relevant statute, i.e., Indian Telegraph Act, 1885, a piece of ancient legislation, does not concern itself with tapping. Tapping cannot be regarded as a tort because the law as it stands today does not know of any general right to privacy.
>
> 166. This is a hardly satisfactory situation. There are instances where apprehensions of disclosure of sources of informations of disclosure of sources of information as well as the character of information may result in constraints on freedom of information and consequential drying up of its source. We, therefore, recommend that telephones may not be tapped except in the interest of national security, public order, investigation of crime and similar objectives under orders made in writing by the Minister concerned or an officer of rank to whom the power in that behalf is delegated. The order should disclose reasons. An order for tapping of telephones should expire after three months from the date of the order. Moreover, within a period of six weeks the order should come up for review before a Board constituted on the lines prescribed in statutes proving for preventive detention. It should be for the Board to decide whether tapping should continue any longer. The decision of the Board should be binding on the Government. It may be added that the Minister or his delegates will be competent to issue a fresh order for tapping of the telephone if circumstances call for it. The Telegraph Act should contain a clause to give effect to this recommendation".

33. While dealing with Section 5(2) of the Act, the Second Press Commission gave following suggestion regarding "public emergency" and "interest of public safety":

> "160. It may be noticed that the public emergency mentioned in the sub-section is not an objective fact. Some public functionary must determine its existence and it is on the basis of the existence of a public emergency that an authorised official should exercise the power of withholding transmission of telegrams. We think that the appropriate government should declared the existence of the public emergency by the notification warranting the exercise of this power and it is only after the issue of such a notification that the power of withholding telegraphic massages should be exercised by the delegated authority. When such a notification is issued, the principal officer of the telegraph office can be required to submit to the District Magistrate, whom we consider to be the proper person to be the delegate for

exercising this power, such telegrams brought for transmission which are likely to be prejudicial to the interest sought to be protected by the prejudicial to the interest sought to be protected by the sub-section. Thereupon the District Magistrate should pass an order in writing withholding or allowing the transmission of the telegram. We are suggesting the safeguard of a prior notification declaring the existence of a public emergency because the power of interception is a determination of the existance of the public emergency in the hands of a delegate".

" We are of the view that whenever the power is excised in the *interest of public safety,* it should, as far as possible, be exercised by the concerned Minister of the appropriate government for one month at a time extendible by Government if the emergency continues. However, in exceptional circumstances the power can be delegated to the District Magistrate.

163 We also think that as soon as an order is passed by the District Magistrate withholding the transmission of a telegraphic message, it should be communicated to the Central or State Government, as the case may be, and also to the sender and the addressee of the telegram. The text of the order should be placed on the table of the respective State legislatures after three months. We recommend that, as suggested by the Press Council of India in its annual report covering 1969. the officer in charge of a telegraph officer should maintain a register giving particulars of the time of receipt, the sender and addressee of every telegram which he refers to the District Magistrate with recommendation of its withholding. Similarly, the District Magistrate should maintain a register of the time receipt, content and addressee of each telegram and record his decision thereon, together with the time of the decision. Data of this nature will help courts, if called upon, to determine the presence or absence of mala fide in the withholding of telegrams".

According to Mr. Sachar the only way to safeguard the right of privacy of an individual is that there should be prior judicial scrutiny before any order for telephone-tapping is passed under Section 5(2) of the Act. He states that such judicial scrutiny may be ex-parte. Mr. Sachar contended that the judicial scrutiny alone would take away the apprehension of arbitrariness or unreasonableness of the action. Mr. Kapil Sibal, on the other hand, has suggested various other safeguards - short of prior judicial scrutiny - based on the law on the subject in England as enacted by the Interception of the Communications Act, 1985.

34. We agree with Mr. Sibal that in the absence of any provision in the statute, it is not possible to provide for prior judicial scrutiny as a procedural safeguard. It is for the Central Government to make rules under Section 7 of the Act. Rule 7(2)(b) specifically provides that the Central Government may make rules laying down the precautions to be taken for preventing the improper interception or disclosure of messages. The Act was enacted in the year 1885. The power to make rules under Section 7 of the Act has been there for over a century but the Central Government has not thought it proper to frame the necessary rules despite severe criticism of the manner in which the power under Section 5(2) has been exercised. It is entirely for the Central Government to make rules on the subject but till the time it is done the right to privacy of an individual has to be safeguarded. In order to rule-out arbitrariness in the exercise of power under Section 5(2) of the Act and till the time the Central Government lays down just, fair and reasonable procedure under Section 7(2)(b) of the Act, it is necessary to lay down procedural safeguards for the exercise of power under Section 5(2) of the Act so that the right to privacy of a person is protected.

35. We, therefore, order and direct as under:-

1. An order for telephone-tapping in terms of Section 5(2) of the Act shall not be issued except by the Home Secretary, Government of India (Central Government) and Home Secretaries of the State Governments. In an urgent case the power may be delegated to an officer of the Home Department of the Government of India and the State Governments not below the rank of Joint Secretary. Copy of the order shall be sent to the Review Committee concerned within one week of the passing of the order.

2. The order shall require the person to whom it is addressed to intercept in the course of their transmission by means a public telecommunication system, such communications as are described in the order. The order may also require the person to whom it is addressed to disclose the intercepted material to such persons and in such manner as are described in the order.

3. The matters to be taken into account in considering whether an order is necessary under Section 5(2) of the Act shall include whether the information which is considered necessary to acquire could reasonably be acquired by other means.

4. The interception required under Section 5(2) of the Act shall be the interception of such communications as are sent to or from one or more addresses, specified in the order, being an address or addresses likely to be used for the transmission of communications to or from, from one particular person specified or described in the order or one particular set of premises specified or described in the order.

5. The order under Section 5(2) of the Act shall, unless renewed, cease to have effect at the end of the period of two month from the data of issue. The authority which issued the order may, at any time before the end of two months period renew the order if it considers that it is necessary to continue the order in terms of Section 5(2) of the Act. The total period for the operation of the order shall not exceed six months.

6. The authority which issued the order shall maintain the following records:

(a) the intercepted communications,

(b) the extent to which the material is disclosed,

(c) the number of persons and their identity to whom any of the material is disclosed.

(d) the extent to which the material is copied and

(e) the number of copies made of any of the material.

7. The use of the intercepted material shall be limited to the minimum that is necessary in terms of Section 5(2) of the Act.

8. Each copy made of any of the intercepted material shall be destroyed as soon as its retention is no longer necessary in terms of Section 5(2) of the Act.

9. There shall be a Review Committee consisting of Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication at the level of the Central Government. The Review Committee at the State level shall consist of Chief Secretary, Law Secretary and another member, other than the Home Secretary, appointed by the State Government.

(a) The Committee shall on its own, within two months of the passing of the order by the authority concerned, investigate whether there is or has been a relevant order under Section 5(2) of the Act. Where there is or has been an order whether there has been any contravention of the provisions of Section 5(2) of the Act.

(b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2) of the Act, it shall set aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material.

(c) If on investigation, the Committee comes to the conclusion that there has been no contravention of the provisions of Section 5(2) of the Act, it shall record the finding to that effect.

36. The writ petition is disposed of. No costs.

SCALE (PIL) 1981-97 1380

PEOPLE'S UNION FOR CIVIL LIBERTIES *Petitioner*

VS

UNION OF INDIA & ANR. *Respondents*

CORAM: B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — FAKE ENCOUNTERS — CONSTITUTION — ARTICLE 21 — Court accepts the report of the District Judge, namely that there was no encounter and the deceased persons were taken into custody and were shot — Court awards Rs. 1 lakh to the families of each of the deceased.

Referred: Challa Ramkonda Reddy & Ors vs State of Andhra Pradesh, AIR 1989 AP 235; Maharaj vs Attorney General of Trinidad and Tobago, 1978 (2) All.E.R.670; Nilabati Behera @ Lalita Behera vs State of Orissa and Ors, 1993 (2) SCC 746; D.K.Basu vs State of West Bengal, 1996 (9) SCALE 298; Minister for Immigration and Ethnic Affairs vs Teoh, (1995) 69 Australian Law Journal 423; S.R. Bommai vs Union of India, (1994) 3 SCC 1; Elisa Chan vs Korean Airlines Limited, 104 L.Ed. 2d.113; Eastern Airlines vs Floyd, 113 L.Ed.2d.569; R.v.Secretary of State for Employment, Ex-parte Equal Opportunities Commission, 1994 ICR 317 = 1994 (1) All E.R. 910; Factortame No.2, 1991 (1) AC 603.

B.P. Jeevan Reddy, J.— People's Union for Civil Liberties has filed this writ petition under Article 32 of the Constitution of India for issuance of a writ of mandamus or other appropriate order or direction (1) to institute a judicial inquiry into the fake encounter by Imphal police on April 3, 1991 in which two persons of Lunthilian village were killed, (2) to direct appropriate action to be taken against the erring police officials and (3) to award compensation to the members of the families of the deceased. According to the petitioner, there was in truth no encounter but it was a case where certain villagers were caught by the police during the night of April 3, 1991, taken in a truck to a distant place and two of them killed there. It is alleged that three other persons who were also caught and taken away along with two deceased persons were kept in police custody for a number of days and taken to Mizoram. They were released on bail only on July 22, 1991. It is further submitted that Hamar Peoples' Convention is a political party active in Mizoram. It is not an unlawful

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Judgment dated February 5, 1997 in W.P. (Crl.) No. 612 of 1992. [1997(1) SCALE 706] organization. Even according to the news released by the said organization, it was a case of deliberate killing. Though representations were made to the Chief Minister of Manipur and other officials, no action was taken. Along with the writ petition, affidavit of the persons who were taken into custody along with the deceased, taken in a truck and kept in custody for a number of days, were filed. Affidavits of the wives of the deceased were also filed setting out the miserable condition of their families after the death of their respective husbands.

2. On notice being given, a counter-affidavit was filed by the Joint Secretary [Home], Government of Manipur denying the allegations. The allegation of 'fake encounter' was denied. It was submitted that there was genuine cross firing between the police and the activists of Hamar Peoples' Convention during which the said two deaths took place. The report of the Superintendent of Police, Churchandpur was relied upon in support of the said averment. It was submitted that Hamar Peoples' Convention was indulging in illegal and terrorist activities and in acts disturbing the public order. Particulars of several F.I.Rs. issued in respect of crimes committed by them under different police stations in that area were set out. The truth and correctness of the supporting affidavits was also disputed. Along with the counter-affidavit, copies of post-mortem reports were filed.

3. After hearing the counsel for both the parties, this Court directed, by its order dated May 30, 1995, that the learned District and Sessions Judge, Churchandpur shall make an inquiry into the alleged incident and submit his report as to what exactly happened on that day. Subsequently, that inquiry was entrusted to learned District and Sessions Judge, Manipur [West], who has submitted his report dated April 8, 1996. The learned District and Sessions Judge has concluded that "there was no encounter in the night between 3-4-1991 and 4-4-1991 at Nungthulien village. The two deceased, namely, Lalbeiklien and Saikaplien were shot dead by the police while in custody on 4-4-1991". The State of Manipur has filed its objections to the report along with certain documents which according to them purport to disprove the correctness of finding recorded by the learned District and Sessions Judge.

4. We have heard the counsel for the parties. We are not satisfied that there are any reasons for not accepting the report of the learned District and Sessions Judge which means that the said two deceased persons were taken into custody on the night of April 3, 1991, taken in a truck to a long distance away and shot there. The question is what are the reliefs that should be granted in this writ petition?

5. It is submitted by Ms. S. Janani, learned counsel for the State of Manipur, that Manipur is a disturbed area, that there are several terrorist groups operating in the State, that Hamar Peoples' Convention is one of such terrorist organizations, that they have been indulging in a number of crimes affecting the public order - indeed, affecting the security of the State. It is submitted that there have been regular encounters and exchange of fire between police and terrorists on number of occasions. A number of citizens have suffered at the hands of terrorists and many people have been killed. The situation is not a normal one. Information was received by the police that terrorists were gathering in the house on that night and on the basis of that information, police conducted the raid. The raiding party was fortunate that the people inside the house including the deceased did not notice the police, in which case the police would have suffered serious casualties. The police party was successful in surprising the terrorists. There was exchange of fire resulting in the death of the terrorists.

6. In view of the fact that we have accepted the finding recorded by the learned

District and Sessions Judge, it is not possible to accede to the contention of Ms. Janani insofar as the manner in which the incident had taken place. It is true that Manipur is a disturbed area, that there appears to be a good amount of terrorist activity affecting public order and, may be, even security of that State. It may also be that under these conditions, certain additional and unusual powers have to be given to the police to deal with terrorism. It may be necessary to fight terrorism with a strong hand which may involve vesting of good amount of discretion in the police officers or other para-military forces engaged in fighting them. If the version of the police with respect to the incident in question were true, there could have been no question of any interference by court. Nobody can say that the police should wait till they are shot at. It is for the force on the spot to decide when to act, how to act and where to act. It is not for the court to say how the terrorists should be fought. We cannot be blind to the fact that even after fifty years of our independence, our territorial integrity is not fully secure. There are several types of separatist and terrorist activities in several part of the country. They have to be subdued. Whether they should be fought politically or be dealt with by force is a matter of policy for the government to determine. The courts may not be the appropriate forum to determine those questions. All this is beyond dispute. But the present case appears to be one where two persons along with some others were just seized from a hut, taken to a long distance away in a truck and shot there. This type of activity cannot certainly be countenanced by the courts even in the case of disturbed areas. If the police had information that terrorists were gathering at a particular place and if they had surprised them and arrested them, the proper course for them was to deal with them according to law. "Administrative liquidation" was certainly not a course open to them.

7. Sri Rajinder Sachhar, learned counsel for the petitioner, submits that in view of the findings of the learned District and Sessions Judge, this is a proper case where this Court should order the prosecution of the concerned police officials and also award compensation to the families of the deceased.

8. In *Challa Ramkonda Reddy & Ors. v. State of Andhra Pradesh* [A.I.R. 1989 A.P. 235], a decision of the Division Bench of the Andhra Pradesh High Court, one of the [B.P. Jeevan Reddy, J.] dealt with the liability of the State where it deprives a citizen of his right to life guaranteed by Article 21. It was held, "In our opinion, the right to life and liberty guaranteed by Article 21 is so fundamental and basic that no compromise is possible with this right. It is `non-negotiable'...... The State has no right to take any action which will deprive a citizen of the enjoyment of this basic right except in accordance with a law which is reasonable, fair and just". The decision also dealt with the question whether the plea of sovereign immunity is available in such a case. The following observations are relevant:

> "The question, however, arises whether it is open to the State to deprive a citizen of his life and liberty otherwise than in accordance with the procedure prescribed by law and yet claim an immunity on the ground that the said deprivation of life occurred while the officers of the State were exercising the sovereign power of the State?.....Can the fundamental right to life guaranteed by Art. 21 be defeated by pleading the archaic defence of sovereign functions? Does it mean that the said theory clothes the State with the right to violate the fundamental right to life and liberty, guaranteed by Art. 21? In other words, does the said concept constitute an exception to Art. 21? We think not. Article 21 does not recognize any exception, and no such exception can

> be read into it by reference to Cl.(1) of Art. 300. Where a citizen has been deprived of his life, or liberty, otherwise than in accordance with the procedure prescribed by law, it is no answer to say that the said deprivation was brought about while the officials of the State were acting in discharge of the sovereign functions of the State."

9. Reliance was placed in the said decision upon the decision of the Privy Council in *Maharaj v. Attorney General of Trinidad and Tobago* [1978 (2) All.E.R. 670]. After setting out the relevant provisions of the Constitution of Trinidad and Tobago, it was pointed out that Section (1) of that Constitution corresponds inter alia to Section 21 of our Constitution, while Sections 2 and Section 6 of that Constitution correspond to Articles 13 and 32/226 of our Constitution. Applying the reasoning of the Privy Council, it was held by the High Court:

> "The fundamental rights are sacrosanct. They have been variously described as basic, inalienable and indefeasible. The founding-fathers incorporated the exceptions in the Articles themselves - wherever they were found advisable, or appropriate. No such exception has been incorporated in Art. 21, and we are not prepared to read the archaic concept of immunity of sovereign functions, incorporated in Art. 300(1), as an exception to Art. 21. True it is that the Constitution must be read as an integrated whole; but, since the right guaranteed by Art. 21 is too fundamental and basic to admit of any compromise, we are not prepared to read any exception in to it by a process of interpretation. We must presume that, if the founding-fathers intended to provide any exception, they would have said so specifically in Part-III itself."

10. In *Nilabati Behera @ Lalita Behera v. State of Orissa and Ors.* [1993 (2) S.C.C. 746], this Court [J.S. Verma, Dr. A.S. Anand and N. Venkatachala, JJ.] held that award of compensation in a proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a remedy available in public law based on strict liability for contravention of fundamental rights. It is held that the defence of sovereign immunity does not apply in such a case even though it may be available as a defence in private law in an action based on tort. It is held further that the award of damages by the Supreme Court or the High Court in a writ proceeding is distinct from and in addition to the remedy in private law for damages. It is one mode of enforcing the fundamental rights by this Court or High Court. Reliance is placed upon Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which says, "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". The two opinions rendered by J.S. Verma, J. and Dr. A.S. Anand, J. are unanimous on the aforesaid dicta. The same view has been reiterated very recently by a Bench comprising Kuldip Singh and Dr.A.S. Anand, JJ. in *D.K. Basu v. State of West Bengal* [1996 (9) SCALE 298]. The observations in Para 56 of the judgment are apposite and may be quoted:

> "Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the *established* infringement of the fundamental right of life of a citizen by the public servants and the State is victoriously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the

amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damage which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the *established* invasion of the fundamental rights of the citizens, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

13. The reference to and reliance upon Article 9(5) of the International Covenant on Civil and Political Rights, 1966 in *Nilabati Behera* raises an interesting question, viz., to what extent can the provisions of such international covenants/conventions be read into national laws. This issue has been the subject-matter of a recent decision in Australia, viz., *Minister for Immigration and Ethnic Affairs v. Teoh* [(1995) 69 Australian Law Journal 423]. The United Nations Convention on the Rights of the Child was ratified by the Commonwealth Executive in December 1990 and had force in Australia from January 16, 1991 pursuant to a declaration made, on December 22, 1992, by the Attorney General pursuant to Section 47(1) of the Human Rights and Equal Opportunity Commission Act, 1986 to the effect that the said convention is an international instrument relating to human rights. Respondent Teoh, a Malaysian citizen was found to have imported and be in possession of heroin, for which he was convicted. A deportation order was passed on that basis. The Immigration Review Panel opined that deportation of Teoh would deprive his young children [who were Australian citizens] of their only financial support, landing them in bleak misery. Article 3 of the aforesaid convention provides that "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". Teoh invoked this Article to ward off his deportation. The matter was carried to High Court where the question of enforceability of the Convention by the national courts was thoroughly debated. Mason, CJ., speaking for himself and Dean, J., stated the position in the following words:

> "It is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute. *[Chow Hung Ching v. The King* (1948) 77 CLR 449 at 478; *Bradley v. The Commonwealth* (1973) 128 CLR 557 at 582; *Simsek v. Macphee* (1982) 148 CLR 636 at 641-642; *Koowarta v. Bjelke-Petersen* (1982)

153 CLR 168 at 211-212, 224-225; *Kioa v. West* (1985) 159 CLR 550 at 570; *Dietrich v. The Queen* (1992) 177 CLR 292 at 305; *J.H. Rayner Ltd. v. Dept. of Trade* (1990) 2 AC 418 at 500.] This principle has its foundation in the proposition that in our constitutional system the making and ratification of treaties fall within the province of the Executive in the exercise of its prerogative power whereas the making and the alteration of the law fall within the province of Parliament, not the Executive. *[Simsek v. Macphee* (1982) 148 CLR, at 641-642]. So, a treaty which has not been incorporated into our municipal law cannot operate as a direct source of individual rights and obligations under that law. In this case, it is common ground that the provisions of the Convention have not been incorporated in this way. It is not suggested that the declaration made pursuant to s. 47(1) of the Human Rights and Equal Opportunity Commission Act has this effect.

But the fact that the Convention has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law. Where a statute or subordinate legislation is ambiguous, the courts should favour that construction which accords with Australia's obligations under a treaty or international convention to which Australia is a party [*Chu Kheng Lim v. Minister for Immigration* (1992) 176 CLR 1 at 38], at least in those cases in which the legislation is enacted after, or in contemplation of, entry into, or ratification of, the relevant international instrument. That is because Parliament, prima facie, intends to give effect to Australia's obligations under international law.

It is accepted that a statute is to be interpreted and applied, as far as its language permits, so that it is in conformity and not in fonflict with the established rules of international law *[Polities v. The Commonwealth* (1945) 70 CLR 60 at 68-69, 77, 80-81].....

Apart from influencing the construction of a statute or subordinate legislation, an international convention may play a part in the development by the courts of the common law. The provisions of an international convention to which Australia is a party, especially one which declares universal fundamental rights, may be used by the courts as a legitimate guide in developing the common law *[Mabo v. Queensland (No.2)* (1991) 175 CLR 1 at 42, per Brennan, J. (with whom Mason CJ and McHugh J. agreed); *Dietrich v. The Queen* (1992) 177 CLR, at 321, per Brennan J.; at 360, per Toohey J; *Jago v. District Court of New South Wales* (1988) 12 NSWLR 558 at 569, per Kirby P; *Derbyshire County Council v. Times Newspapers Ltd* (1992) QB 770.] But the courts should act in this fashion with due circumspection when the Parliament itself has not seen fit to incorporate the provisions of a convention into our domestic law. Judicial development of the common law must not be seen as a backdoor means of importing an unincorporated convention into Australian law. A cautious approach to the development of the common law by reference to international conventions would be consistent with the approach which the courts have hitherto adopted to the development of the common law by reference to statutory policy and statutory materials *[Lamb v. Cotogno*

(1987).164 CLR 1 at 11-12]. Much will depend upon the nature of relevant provision, the extent to which it has been accepted by the international community, the purpose which it is intended to serve and its relationship to the existing principles of our domestic law."

14. Toohey, J. and Gaurdron, J. broadly concurred with the above opinion. Toohey, J. spoke of such Conventions giving rise to legitimate expectation among the people that the Executive will honour the commitment while taking any action concerning children while Gaudron, J. relegated the convention to a subsidiary position vis-a-vis Australian statute law. [McHugh, J. dissented altogether].

15. The main criticism against reading such conventions and covenants into national laws is one pointed out by Mason, CJ. himself, viz., the ratification of these conventions and covenants is done, in most of the countries by the Executive acting alone and that the prerogative of making the law is that of the Parliament alone, unless the Parliament legislates, no law can come into existence. It is not clear whether our Parliament has approved the action of the Government of India ratifying the said 1966 Covenant. Assuming that it has, the question may yet arise whether such approval can be equated to legislation and invests the covenant with the sanctity of a law made by Parliament. As pointed out by this Court in *S.R. Bommai v. Union of India* [1994 (3) S.C.C. 1], every action of Parliament cannot be equated to legislation. Legislation is no doubt the main function of the Parliament but it also performs many other functions all of which do not amount to legislation. In our opinion, this aspect requires deeper scrutiny than has been possible in this case. For the present, it would suffice to state that the provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such. So far as multi-latenal treaties are concerned, the law is, of course, different - and definite. See United States Supreme Court decisions in *Elisa Chan v. Korean Airlines Limited* [104 L.Ed. 2d. 113] and *Eastern Airlines v. Floyd* [113 L.Ed.2d.569] and the House of Lords decision in *R. v. Secretary of State for Employment, Ex-parte Equal Opportunities Commission* [1994 I.C.R.317 = 1994 (1) All.E.R. 910] following its earlier decisions, including *Factortame No.2* [1991 (1) A.C. 603].

16. Now coming to the facts of the case, we are of the opinion that award of compensation of Rs. 1,00,000/- [Rupees one lakh only] to the families of each of the deceased would be appropriate and just. The same shall be paid by the Government of Manipur. The Collector/District Magistrate, Churachandpur shall hand over the cheques to the respective families of the deceased, namely Lalbeiklien and Saikaplien, within two months from today. The writ petition is disposed of accordingly. The People's Union for Civil Liberties, which has filed this writ petition and pursued it all these years shall be entitled to its costs, assessed at Rs. 10,000/ - [Rupees ten thousand only] payable by the State of Manipur within the same period.

SCALE (PIL) 1981-97 1387
M.C. MEHTA *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA CJI, B.N. KIRPAL AND V.N. KHARE, JJ.

PUBLIC INTEREST LITIGATION — MOTOR VEHICLES — ROAD SAFETY — CONSTITUTION — ARTICLE 32 rw 142 — Vehicular traffic in Delhi — Court issues certain detailed directions with a report of compliance to be submitted on or before December 8, 1997.

1. After hearing learned counsel for the parties and learned Amicus Curiae, for reasons indicated separately, in exercise of the power of this Court under Article 32 read with Article 142 of the Constitution of India, we hereby give the following directions, namely:

A. The Police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act and generally with the control of the traffic shall ensure the following:

(a) No heavy and medium transport vehicles, and light goods vehicles being four wheelers would be permitted to operate on the roads of the NCR and NCT, Delhi, unless they are fitted with suitable speed control devices to ensure that they do not exceed the speed limit of 40 KMPH. This will not apply to transport vehicles operating on Inter-State permits and national goods permits. Such exempted vehicles would, however, be confined to such routes and such timings during day and night as the police/transport authorities may publish. It is made clear that no vehicle would be permitted on roads other than the aforementioned exempted roads or during the times other than aforesaid time without a speed control device.

(b) In our view the scheme of the Act necessarily implies an obligation to use the vehicle in a manner which does not imperil public safety. The authorities aforesaid should, therefore, ensure that the transport vehicles are not permitted to overtake any other four-wheel motorised vehicle.

(c) They will also ensure that wherever it exists, buses shall be confined to the bus lane and equally no other motorised vehicle is permitted to enter upon the bus lane. We direct the Municipal Corporation of Delhi, NDMC, PWD, Delhi Government and DDA, Union Government and the Delhi Cantt. Board to take steps to ensure that bus lanes are segregated and roads markings are provided on all such roads as may be directed by the police and transport authorities.

(d) They will ensure that buses halt only at bus stops designated for the purpose and within the marked area. In this connection also Municipal Corporation of Delhi, NDMC, PWD, Delhi Government, DDA and Union of India and Delhi Cantt. Board would take all steps to have appropriate bus stops constructed, appropriate markings made, and 'bus-bays' built at such places as may be indicated by transport/police authorities.

(e) Any breach of the aforesaid directions by any person would, apart from entailing other legal consequences, be dealt with as contravention of the conditions of the permit which could entail suspension/cancellation of the permit and impounding of the vehicle.

(f) Every holder of a permit issued by any of the road transport authorities in the NCR and NCT, Delhi will within ten days from today, file with its RTA a list or drivers who

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Order dated November 20, 1997 in W.P. (C) No. 13029 of 1985 (with W.P. (C) No. 9300/82, 939/96, 95/97 and I.A. Nos. 7, 8, 9 & 10 in W.P. (C) No. 13029/85. [1997(7) SCALE 97] are engaged by him together with suitable photographs and other particulars to establish the identity of such persons. Every vehicle shall carry a suitable photograph of the authorised driver, duly certified by the RTA. Any vehicle being driven by a person other than the authorised driver shall be treated as being used in contravention of the permit and the consequences would accordingly follow.

No bus belonging to or hired by an educational institution shall be driven by a driver who has

- less than ten years of experience;
- been challaned more than twice for a minor traffic offence:
- been charged for any offence relating to rash and negligent driving.

All such drivers would be dressed in a distinctive uniform, and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution.

(g) To enforce these directions, flying squads made up of inter-departmental teams headed by an SDM shall be constituted and they shall exercise powers under Section 207 as well as Section 84 of the Motor Vehicles Act.

The Government is directed to notify under Section 86(4) the officers of the rank of Assistant Commissioners of Police or above so that these officers are also utilised for constituting the flying squads.

(h) We direct the police and the transport authorities to consider immediately the problems arising out of congestion caused by different kinds of motorised and non-motorised vehicles using the same roads. For this purpose, we direct the police and transport authorities to identify those roads which they consider appropriate to be confined only to motorised traffic including certain kind of motorised traffic and identify those roads which they consider unfit for use by motorised or certain kinds of motorised traffic and to issue suitable directions to exclude the undesirable form of traffic from those roads.

(i) The civic authorities including DDA, the railways, the police and transport authorities, are directed to identify and remove all hoardings which are on road-sides and which are hazardous and a disturbance to safe traffic movement. In addition, steps be taken to put up road/traffic signs which facilitate free flow of traffic.

B. We direct the Union of India to ensure that the contents of this Order are suitably publicised in the print as well as the electronic media not later than November, 22, 1997 so that every body is made aware of the directions contained in the Order. Such publication would be sufficient public notice to all concerned for due compliance.

C. We direct that this Order will be carried out notwithstanding any other order or directions by any authority, Court or Tribunal, and that no authority shall interfere with the functioning of the police and transport department in so far as implementation and execution of these directions is concerned.

2. A report of compliance be submitted on or before 8th December, 1997.

3. List on 9th December, 1997.

SCALE (PIL) 1981-97 1388

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: J.S. VERMA CJI, B.N. KIRPAL AND V.N. KHARE, JJ.

Order dated November 20, 1997 in W.P. (C) No. 13029 of 1985. [1997(7) SCALE 114]

PUBLIC INTEREST LITIGATION — MOTOR VEHICLES — ROAD SAFETY — CONSTITUTION — ARTICLE 21, 32 & 142 — Vehicular traffic in Delhi (NCR and NCT) — Court gives reasons for issuing directions reported in 1997(7) SCALE 97.

1. One of the aspects covered by this writ petition relates to proper management and control of the traffic in the National Capital Region (NCR) and the National Capital Territory (NCT), Delhi to ensure the maximum possible safeguards which are necessary for public safety. The problem is too obvious the require elaboration and the need for urgent measures to prevent any further delay in enforcement at least of the existing provisions of law is imperative. The need is accentuated by the alarming rise in the number of road accidents and the resulting deaths and bodily injuries caused thereby. The most recent tragedy in which a school bus broke the parapet of a bridge and fell into the river a couple of days back does not permit any further delay in taking urgent measures in this behalf. For this reason, in addition to the assistance we have been given by the learned *amicus curiae*, the Additional Solicitor General and the Bar in general, we considered it appropriate to also require the presence of the Chief Secretary Mr. P.V. Jaikishan, the Police Commissioner Mr. T.R. Kakkar and the Commissioner (Traffic) Ms. Kiran Dhingra, to examine the matter at some length.

2. Having heard all of them and after taking into account the various suggestions which have been given at the hearing, we find that there are adequate provisions in the existing law which, if properly enforced, would take care of the immediate problem and to a great extent eliminate the reasons which are the cause of the road accidents in NCR and NCT, Delhi. In view of the fact that the above officers expressed some doubt about the extent of powers of the concerned authorities to take adequate and suitable measures for speedy enforcement of these provisions and the remedial steps needed to curb the growing menace of un-regulated and disorderly traffic on the roads, we consider it expedient to clarify that position in this order with reference to the relevant provisions of the existing law. It is obvious that it is primarily for the Executive to devise suitable measures and provide the machinery for rigid enforcement of those measures to curb this menace. However, the inaction in this behalf of the Executive in spite of the fact that this writ petition is pending since 1985 and the menace instead of being controlled continues to grow in perpetuation of this hazard to public safety, it has become necessary for this Court to also issue certain directions which are required to be promptly implemented to achieve the desired result. It is needless to add that these directions are to remain effective till such time as necessary action in this behalf is taken by the concerned Executive authorities so that the continuance thereafter of these directions may not be necessary.

3. In our opinion, the provisions of the Motor Vehicles Act, 1988, in addition to the provisions in the existing laws, for example, the Police Act and the Code and Criminal Procedure, confer ample powers on the authorities to take the necessary steps to control and regulate the road traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses threat or hazard to public safety. It need hardly be added that the claim of any right by an individual or even a few persons cannot override and must be subordinate to the larger public interest and this is how all provisions conferring any individual right have to be construed. We may now refer to some provisions of the Motor Vehicles Act, 1988 (for short "the Act") which are relevant for the purpose.

4. Section 2(47) defines "transport vehicle" to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Each one of these vehicles are separately defined in other sub-sections of Section 2. Sub-section (28) defines "motor vehicle". In short, the definitions contained in Section 2 of the Act cover all kinds of vehicles which ply on the roads so that they are all governed by the provisions of the Act.

5. Chapter II relates to licensing of drivers of motor vehicles wherein Section 19 confers power on the licensing authority to disqualify any person from holding a driving licence or revoke such licence. A few of the grounds on which this power can be exercised, are: When the motor vehicle is used or has been used in commission of a cognizable offence: When the previous conduct as driver of a motor vehicle has shown that his driving is likely to be attended with danger to the public: or when he has committed any such act which is likely to cause nuisance or danger to the public etc. These general grounds alone are sufficient to indicate that any person who poses any threat or is likely to cause nuisance or danger to the public can be disqualified and his licence revoked.

6. Chapter IV deals with the registration of motor vehicles wherein Section 39 prescribes the necessity for registration. It says that unless the vehicle is registered in accordance with the provisions of the Act, it cannot be driven in any public place. The responsibility to ensure that such a vehicle is not driven is not merely on the person driving the vehicle but also on the owner of the vehicle. Section 45 permits refusal of registration or renewal of the certificate of registration inter alia on the ground that the vehicle is mechanically defective or fails to comply with the requirements of the Act or the rules made thereunder. It is obvious that the vehicle must be road worthy in the sense that there is no mechanical defect therein to permit it being used as a motor vehicle. The necessity of complying with all the requirements makes it clear that any requirement which is specified under the Act or by the rules, has to be fully complied with and such a requirement would include the requirement of a specified category of motor vehicles being fitted with speed governors or such other devices as may be prescribed by law. Section 53 permits suspension of registration by the registering authority or other prescribed authority if it has reason to believe that any motor vehicle is in such a condition that its use in a public place would constitute a danger to the public or that it fails to comply with the requirements of this Act or of the rules made thereunder. It is significant that this power to suspend the registration is available to the authority even if the condition of the motor vehicle is found to be such that its use in a public place would constitute a danger to the public, irrespective of whether that is a specific requirement of the Act or the rules. The conferment of this power is for the obvious reason that a motor vehicle which is considered to be unsafe or which poses a danger to the public in a public place, if driven, should not be permitted to ply at a public place since the paramount need is public safety. It is, therefore, clear that even if speed governors are not prescribed for a particular class of motor vehicles by any requirement of the Act or the rules made thereunder, it is permissible for the concerned authority to require the fitting of the speed governors in such motor vehicles for the purpose of ensuring that there is no danger to the public by the use of such a motor vehicle in a public place. The power under Section 53 to this extent is wider. Section 53 read with Section 45 leaves no doubt about the amplitude of power of the concerned authorities whose duty it is to control and regulate the traffic in public places. The basic test to be applied by them for exercise of this power is the need to ensure that there is no danger to the public by use of any motor vehicle in a public place.

7. It is indisputable that heavy and medium vehicles as well as light goods vehicles are in a class by themselves in so far as their potential to imperil public safety is concerned. There is, therefore, immediate need to take measures such as installation of speed control devices and ensuring that such vehicles are driven by authorised persons. Such measures, designed to further public safety, would undoubtedly be covered by the aforementioned provisions.

8. Chapter V relates to control of transport vehicles. Section 66 prescribes the necessity of a permit without which the vehicle cannot be used in any public place. Section 84 deals with general conditions attaching to all permits. These conditions are deemed to be incorporated in every permit and do not require any additional or further mention thereof in each permit. Some of the significant general conditions are that the vehicle is at all times to be so maintained as to comply with the requirements of the Act and the rules made thereunder: and that the vehicle is not driven at a speed exceeding the permitted speed. Section 86 provides for cancellation and suspension of permits. The authorities are empowered to cancel or suspend the permit on the breach of any of the general conditions specified in Section 84 or any other condition when contained in the permit. Both these provisions are to be read with Section 56 which provides for certificate of fitness of transport vehicles. We may also refer to sub-section (4) of Section 86 which permits exercise of the power of cancellation and suspension of permit by the transport authority or any authority or person to whom such powers are duly delegated. The provision to enable delegation of these powers is obviously to make it workable in case the jurisdiction of the transport authority is so large, as in the case of NCR and NCT. Delhi, so that the need is of several persons to exercise this authority.

9. Chapter VIII deals with the control of traffic. Section 112 pertains to limits of speed and prohibits driving of a motor vehicle or it being allowed to be driven in any public place at a speed exceeding the maximum permissible speed.

10. Chapter XIII relates to offences, penalties and procedure. Section 177 contains the general provisions for punishment of offences which is available in the absence of any specific provision for punishment applicable in a given case. The punishment is a maximum fine of Rs. 100/- for the first offence and for the subsequent offence is only Rs. 300/- Section 183 provides the punishment for contravention of the speed limits referred in Section 112 and Section 184 provides for punishment for dangerous driving. The maximum punishment provided in all these three Sections has ceased to have any efficacy in the present case and has, therefore, hardly any deterrent effect. We are informed that some time back Transport Commissioner, Delhi had recommended the raising of the maximum punishment but even the proposal for increase in the amount of maximum fine did not find favour with the Central Government. We have no doubt that the very thoughtful proposal made by the Transport Commissioner did not receive the attention is deserved at the level of the Central Government. Taking into account the realities and the chaotic state of road traffic in NCR and NCT, Delhi, we are surprised that any one sitting in Delhi and seeing for himself these conditions, thought it fit not to accept the recommendations made by the Transport Commissioner when in fact the need for increase of the maximum punishment, required in the existing circumstances, is even more.

11. One of the aspects which was considered at length by us was the need to find some stringent and effective measure to at least bring to a half the danger posed to the public by the continued use of a motor vehicle which is not roadworthy or was being used/driven dangerously. We find that Section 207 takes care of that situation by conferring power on any police officer or other person authorised in this behalf to seize and detain the vehicle if he has reason to believe that the same has been or is being used in contravention of the specified provisions so as to pose a serious threat to the public. The object of enacting such a provision clearly is that such a vehicle cannot be continued to ply once it is found that it poses danger to the public because, in addition to punishing the guilty person for the contraventions committed earlier, it is also important and necessary to prevent any further danger to the public by letting the vehicle continue to ply on a public place.

12. In our opinion, the existing provisions in the Act alone are sufficient to clothe the members of the police force and the transport authorities with ample powers to control and regulate the traffic in an appropriate manner so that no vehicle being used in a public place poses any danger to the public in any form. The requirement of maintaining the motor vehicles in the manner prescribed and its use if roadworthy in a manner which does not endanger public, has to be ensured by the authorities and this is the aim of these provisions enacted in the Act. As earlier stated, we reach this conclusion even without reference to the general powers available to the police officers under the Police Act and the Code of Criminal Procedure.

13. It is also to be noted that to overcome the situation when the strength of the police force is not adequate in a given area and the utilisation of more men is required for strict enforcement of these salutary provisions, the law confers power of delegation of the authority to other persons. We are conscious of the fact that the inadequacy of personnel and other infrastructure may be a constraint which has impeded strict enforcement of these provisions so far. We have no doubt that after this clarification made by us in this order, the concerned authorities would mobilize the needed support by delegation of these powers to other authorities/officers and if need be even to responsible members of the public so that the resource crunch or inadequacy of infrastructure is not an impediment in enforcement of the law and the directions given today to obtain the desired results. No doubt, it is for the Government to make a realistic assessment of the strength of police force and Transport Department force to meet the felt need in this behalf but we consider it expedient to add that to overcome that deficiency/inaction, this order is to be construed as empowering the existing authorities to delegate their authority, wherever permissible under the law, to responsible persons in the manner they deem fit in the circumstances. In view of the urgency of implementation of these measures, we also make it clear that for the purpose of such delegation to responsible persons chosen even from the public, these authorities would not suffer from any constraint and this order is sufficient empowerment to them in this behalf notwithstanding any administrative orders imposing any impediment or constraint on them, if any.

14. It is needless for us to add that the entire scope of this matter and particularly this aspect to which this order relates, namely, the control and regulation of traffic in NCR and NCT, Delhi, is a matter of paramount public safety and, therefore, is evidently within the ambit of Article 21 of the Constitution. That being so, the making of this order has become necessary and can no longer be delayed because of the obligation of this Court under Article 32 of the Constitution which is invoked with the aid of Article 142 to give the necessary directions given today separately.

SCALE (PIL) 1981-97 1393

JAGRITI UPBHOGTA KALYAN PARISHAD & ORS. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI., S.B. MAJMUDAR AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — LIBERALIZATION OF THE ECONOMY — SUPPLY OF L.P.G. PRODUCTS — Update of order reported in 1997 (7) SCALE SP4 — Court appoints a Chartered Accountant to examine the accounts of Respondent No. 12 - Company and to submit a report of the same.

1. This matter has been pending in this Court for quite some time. The fact that such a matter had to be entertained by this Court itself is a serious reflection on the nature of functioning of the concerned government agencies whose job primarily it is to ensure that the things complained of in this writ petition do not happen and if they do then the wrongdoers are identified and dealt with in accordance with law correcting the aberrations in the working of the system which have enabled a few persons as alleged in the writ petition to do several acts largely detrimental to public interest. We had hoped that after the matter was entertained by this Court and notice was issued also to the Central Government, the agencies of the Central Government would be activated atleast then and this Court would not be required to make any specific order for getting the needful done since it is primarily for the Executive to correct this aberration. However, we find that nothing significant has been done by any of these agencies so far inasmuch as there is no indication given as yet on behalf of the Central Government of any step being taken to even examine the action, if any, required to be taken for exercise of its powers under the companies Act. The allegations made in this writ petition, if found to be true, suggest the mismanagement in the affairs of the company and, therefore, irrespective of the outcome of this writ petition, that is a matter requiring independent examination by the concerned authorities.

2. The learned Additional Solicitor General informs us that on account of the pendency of this writ petition, the agencies of the Central Government appear to have deferred taking any definite steps to await the outcome of this writ petition. To say the least, we are surprised if this is the cause for their inaction. In the first place such a matter was not required to be brought to the court to invoke the judicial process inasmuch as it was primarily for the concerned Executive authorities to deal with this matter. It was complete inaction on their part which was the occasion for the filing of this writ petition and, therefore, the court invoking its jurisdiction under Article 32 read with Article 142 of the Constitution to find a proper solution in a matter of this kind involving large public interest and a very large number of persons whose interest appears to have been adversely affected on account of the alleged acts and omissions of the company in question. We had expected that atleast after this Court had taken cognizance of this matter, the Executive process would be activated so that the needful is done by the concerned agencies of the Government and the court is not called upon to issue any specific direction or make orders for achieving the desired results. We are constrained to place this on record to account of the existing situation even now.

3. An affidavit has been filed on behalf of the company and some documents have

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Order dated November 17, 1997 in W.P. (C) No. 758/96 [1997(7) SCALE 308] also been produced pursuant to our order dated 20.10.1997. The contents of these documents do not give the clear picture of the kind required by our order dated 20.10.1997. In these circumstances, we consider it appropriate to appoint a Chartered Accountant to examine the accounts of the company and give its report with particular reference to the details sought from the company in our order dated 20.10.1997. M/S. A.F Ferugson & Co., Delhi is appointed for the purpose. The fees and expenses be paid by the company. A sum of Rs. 5 lakhs on account be deposited by the company within two weeks.

4. A copy of the orders made by this Court and copy of the writ petition be supplied to the Chartered Accountants. Their report is to be given taking note of the contents of the writ petition and all other documents and the orders made in the writ petition within 10 weeks. In the meantime, the fixed assets (mentioned at pages 253-254 of the paperbook) of the company would not be alienated or in any manner encumbered by the company nor any third party interest be created therein.

5. We also direct that an affidavit of a senior officer be filed on behalf to the Central Governments giving details of the action, if any taken by the Central Government or its agencies in this matter.

6. List after the report is submitted by the Chartered Accountants.

SCALE (PIL) 1981-97 1394

PUBLIC UNION FOR CIVIL LIBERTIES *Petitioner*

VS

STATE OF TAMIL NADU & ORS. *Respondents*

CORAM: J.S. VERMA, CJI., B.N. KIRPAL AND V.N. KHARE, JJ.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — Order reported in 1997(7) SCALE(SP) 8 — Court transfers the matter to National Human Rights Commission.

1. A detailed order was made in this regard on 13th May, 1994. Certain steps have been taken thereafter which are reflected in the subsequent orders made by this Court. We have today made an order in Writ Petition (Crl.) No. 1900 of 1981 requesting the National Human Rights Commission to be involved in the supervision of the functioning of the Agra Protective Home in the manner indicated in that order. We are of the opinion that the same kind of order needs to be made in this matter also relating to bonded labours. Accordingly, we request the National Human Rights Commission to perform this exercise in the same manner. The general directions given in our order made in Writ Petition (Crl.) No. 1900 of 1981 would also be equally applicable in the present case. A copy of this order together with a copy of the order in Writ Petition (Crl.) No. 1900 of 1981 and other relevant orders and papers, as indicated by learned amicus curiae, Mr. A.K. Ganguli be sent by the Registry to the National Human Rights Commission.

2. We also place on record our appreciation to Learned amicus curiae, Mr. A.K. Ganguli for the assistance rendered to the Court in these proceeding and his offer to assist the National Human Rights Commission also hereafter. We are sure that the Commission will appreciate his assistance in performance of this exercise.

Order dated November 11, 1997 in W.P. (C) No. 3922 of 1985 with W.P. (Crl.) No. 153/82, WP(C) 166/95, 380/96, SLP (C) 9795/96 [1997(7) SCALE (SP) 17]

SCALE (PIL) 1981-97 1395

DR. UPENDRA BAXI *Petitioner*

VS

STATE OF UTTAR PRADESH & ORS. *Respondents*

CORAM: J.S. VERMA, CJI, B.N. KIRPAL AND V.N. KHARE, JJ.

PUBLIC INTEREST LITIGATION — AGRA PROTECTIVE HOME — Court requests the NHRC to be involved in the supervision of the working of the Agra Protective Home to ensure that it functions in the manner as is expected for achieving the object for which it has been set up.

1. By Order dated 29th April, 1991, this Court had disposed of this matter and directed the learned District Judge of Agra to continue to monitor the affairs of Agra Protective Home and give the necessary directions from time to time, as may be required for this purpose in addition to sending periodical reports to this Court. In view of certain problems which arose thereafter, the matter has been required to be taken up again by the Court. We are constrained to observe that the concerned authorities of the Government of Uttar Pradesh have not been vigilant in this matter which has given rise to justifiable criticism of the continued mal-functioning of the Agra Protective Home.

2. Having dealt with this matter for some time, we have formed the opinion that a better method for supervision of the functioning of the Agra Protective Home is necessary. Now, that the benefit of the National Human Rights Commission (NHRC) with statutory powers under Protection of Human Rights Act, 1993 is available and since most of the problems associated with the functioning of the Agra Protective Home are such that they can be better dealt with by NHRC, we consider it expedient to make this order to involve the NHRC in this exercise. It is likely that the pendency of this matter and the directions made by this Court may have to some extent inhibited the NHRC in exercise of its ordinary functions relating to the Agra Protective Home so far. The order we make herein will also have the effect of removing any such impression or inhibition.

3. We now request the NHRC to be involved in the supervision of the working of the Agra Protective Home to ensure that it functions in the manner as is expected for achieving the object for which it has been set up. For this purpose, we modify the earlier order dated 29th April, 1991, and direct that the District Judge, Agra would now send his reports to the NHRC, with a copy to the Registry of this Court. The NHRC, acting on the reports of the District Judge or otherwise in the manner it considers fit will ascertain the facts relating to the actual functioning of the Agra Protective Home and would issue the necessary direction to the concerned authorities for prompt compliance by them so as to ensure proper functioning of the Agra Protective Home. It is expected that all the concerned authorities would promptly comply with such directions given by the NHRC. In case, any clarification is needed by any authority or by the NHRC or by the amicus curiae, it would be open to them to approach this Court for the same and it would also be open to the NHRC to invoke the jurisdiction of this Court for making such other orders as it considers necessary and expedient for achieving fully the objective of this exercise.

4. We must place on record our appreciation of the stand taken by the learned Solicitor General that this would be the appropriate course to adopt and that the

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Order dated November 11, 1997 in W.P. (Crl.) No. 1900 of 1981 [1997(7) SCALE (SP) 17]

NHRC is the most suitable agency for the performance of this task for which purpose assurance of the Central Government has been indicated by the learned Solicitor General.

5. Draft of some guidelines suggested by the learned Solicitor and learned amicus curiae, Mr. S. Muralidhar, to which the State has agreed may also be sent to the NHRC for their comments in addition to other papers in the record to be indicated by the learned amicus curiae. Registry to take prompt action to this effect.

6. We also placed on record our appreciation to learned amicus curiae, Mr. S. Muralidhar for the assistance rendered to the Court in these proceedings and his offer to assist the NHRC also hereafter. We are sure that the Commission will appreciate his assistance in performance of this exercise.

SCALE (PIL) 1981-97 1396

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA, CJI., B.N. KIRPAL AND V.N. KHARE, JJ.

PUBLIC INTEREST LITIGATION — MOTOR VEHICLES ACT — CONSTITUTION — ARTICLE 32 rw 142 — Vehicular traffic in Delhi — Hoardings which are hazardous and a disturbance to safe traffic movement — Removal of — Court reiterates its order reported in 1997(7) SCALE 97.

I.A. No. 11

1. The application stands disposed of.

I.A. No. 12

2. This application is made by Delhi Outdoor Advertisers Association. The prayer in the application is for clarification/ modification of the order dated November 20, 1997 in so far as it relates to the direction given therein for the removal of all hoardings which are on road-sides and which are a disturbance to safe traffic movement. Having heard Shri G. Ramaswamy, learned senior counsel for the applicant, and the learned amicus curiae, we are satisfied that this application must be rejected. We have perused the notice published by the Commissioner of M.C.D. warning all advertisers/owners of hoardings in Delhi to remove such hoardings and also the notices issued thereafter as a result of non-compliance of the notice by some persons. We are satisfied that the steps taken are in the proper direction to identify and remove these hoardings. Shri G. Ramaswamy submitted that the order enables the authorities to act arbitrarily and to remove any hoarding at their will which should not be permitted. In our opinion, such a perception is not correct. The order made by this Court on November 20, 1997, which was duly publicised has directed in the order itself publicity through the electronic media and is obviously well-known to every one. The applicants belong to a category who would undoubtedly be aware of the order and its requirement. Even thereafter, a notice requiring compliance was published in the newspapers and in addition, in case of continuing default, individual notices were issued some of which were shown to us by the learned counsel. There is,

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Order dated December 10, 1997 in W.P. (C) No. 13029 of 1985 (with W.P.(C) 9300/82, 939/96, 95/97, & IA 7-8/11-13 in WP(C) No. 13029/85 [1997(7) SCALE 581] thus, sufficient notice to every person and no further notice of the kind suggested by Shri Ramaswamy is required to any advertiser/ owner of the hoardings. The order dated November 20, 1997 is quite clear and has also been correctly understood by the authorities and all concerned. It directs the authorities to 'remove all hoardings which are on road-sides and which are hazardous and a disturbance to safe traffic movement'. There is no ambiguity in the order. It is obvious that every hoarding, other than traffic signs and road signs on the road-sides have to be removed irrespective of its kind; every hoarding irrespective of whether it is on the road-side or not which is hazardous and a disturbance to safe traffic movement so as to adversely affect free and safe flow of traffic is required to be identified by the authorities and promptly removed. Obviously, the hazardous hoarding which is a disturbance to safe traffic movement has to be a hoarding visible to the traffic on the road. No other detail or further guideline is required for appreciating this order and its implementation. Even though the order dated 20.11.1997 was explicit and very clear, yet these further observations are made to leave no one in any doubt of the content and requirement of our order.

3. We reiterate the direction given in our order dated November 20, 1997 that the order made by us even in respect of the hoardings is required to be implemented notwithstanding any other order of directions including stay orders/injunctions granted by any authority, court or tribunal to the contrary.

4. Interlocutory Application is, therefore, disposed of.

SCALE (PIL) 1981-97 1397

STATE OF HIMACHAL PRADESH *Appellant*

VS

A PARENT OF A STUDENT OF MEDICAL COLLEGE, SHIMLA & ORS. *Respondent*

CORAM: P.N. BHAGWATI, AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.

PUBLIC INTEREST LITIGATION — High Court — If could give directions to State Government to pass certain law.

PUBLIC INTEREST LITIGATION — PRACTICE & PROCEDURE — High Court — If could keep the name of complainant in public interest litigation as a secret — Petition — If could be ordered not to form part of record — The parents of a student of a Medical College wrote a letter to the Chief Justice of the High Court complaining about the ragging of freshers by senior students within and outside the college campus and hostel. The complainant, however, requested the Chief Justice that his letter may not be placed on record for fear of reprisal by hostel students. Treating the letter as a writ petition the Division Bench issued notice to the Chief Secretary to the State Government. On receipt of the notice the Chief Secretary filed an affidavit stating the steps taken by the State Government and the college authorities to check ragging of freshers by senior students. Satisfied about the evils of ragging in colleges the Division Bench directed the State Government tot constitute a Committee to recommend on the steps to be taken

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Judgment dated April 11, 1985 in C.A. No. 1499 of 1985 (in SLP (C) 12612/84). [1985(1) SCALE 758]

for curbing the evil of ragging and the machinery to be set up to enforce the measures. The Committee constituted by the State Government recommended that ragging should be made a cognizable offence and suggested initiation of legislation as early as possible in this respect. The Division Bench directed the Chief Secretary to file an affidavit as to the action proposed to be taken by the Government on the recommendations of the Committee for initiating the legislation. The State Government preferred the present appeal — Allowing the appeal, Held,

A. By giving a direction to the Chief Secretary what the Division Bench intended to achieve was not just to obtain information as to what the State Government proposed to do in the matter but to actually require the State Government to initiate legislation against ragging. Though the Chief Secretary stated that the State Government had taken notice of the recommendations to initiate legislation "if found necessary and so advised", the Division Bench persisted in reiterating that the Chief Secretary should file an affidavit. This persistence showed that what the Division Bench intended was not merely to obtain information as to the action proposed to be taken but to obligate the State Government to take action by way of initiation of legislation against ragging. This was nothing short of an indirect attempt to compel the State Government to initiate legislation. The Division Bench was clearly not entitled to do this. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. The Court cannot mandate the executive or any member of the legislature to initiate legislation howsoever necessary or desirable the Court may consider it to be. When the Court passes orders in public interest litigation, it does so not with a view to mocking at legislative or executive authority or in a spirit of confrontation but with a view to enforcing the Constitution and the law because it is vital for the maintenance of the Constitution and the law are carried out effectively and no one should go away with the feeling that the Constitution and the law are meant only for the benefit of the fortunate few and have no meaning for a large number of people of the country.

B. It is not every letter that may be treated as a writ petition. It is only where a letter addressed by the under-privileged who find it difficult to approach the court to redressal of their legal or constitutioinal rights that the Supreme Court or the High Court is bound to treat the letter as a writ petition. In suitable case it may also interfere even in individual cases. The Division Bench was in error in directing that the letter should not be placed on record of the proceedings. If identity of the petitioner was not disclosed the respondent against whom relief is sought would have no means of knowing the authenticity of the petitioner and the credibility of the allegation. Such action would be contrary to all cannons of fair play and violative of all principles of judicial propriety and administration to entertain a writ petition without disclosing the identity of the petitioner.

Bhagwati, J.— This appeal by special leave is directed against two orders made by a Division Bench of the High Court of Himachal Pradesh, one dated 24th July, 1984 and the other dated 18th September 1984, in so far as they direct the Chief Secretary to the Government of Himachal Pradesh to file an affidavit setting out what action has been taken by the State Government towards implementation of the recommendation contained in paragraph 16 of the Report of the Anti-Ragging Committee. The impugned orders are in our opinion wholly unsustainable and ordinarily we would not have taken time to deliver a reasoned judgment and merely set aside the impugned orders with a brief observation, but we think it necessary to state in some detail our opinion in regard to the directions given in the impugned orders, because we find that this is one of those few cases which demonstrates what we have often said before, that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the legislature.

2. It appears that the Chief Justice of the High Court received a letter dated 4th April, 1984, from the guardian of a student of the Medical College in Shimla complaining about the ragging of freshers by senior students within as also outside the college campus and the hostel. The guardian of the student had annexed along with his letter to the Chief Justice a letter dated 25th March, 1984 received by him from his son. The Division Bench of the High Court presided over by the Chief Justice treated these two letters as constituting the Memo of Writ Petition but directed that these two letters should not be placed on the record of the proceedings in view of the request made in paragraph 6 of the letter of the guardian that the identity of the write should not be disclosed on account of fear of reprisal and for the self-same reason the Division Bench ordered that the identity of the student and the guardian should not be disclosed in the proceedings. The Division Bench treating the two letters as a writ petition registered them as Civil Writ Petition No. 155 of 1984 and issued notice to the State Government, the Principal of the Medical College, Simla, the Himachal Pradesh University and the Director of Health Services, Government of Himachal Pradesh who were arrayed as respondents no. 1 to 4. On receipt of the notice of the Writ Petition, the Government of Himachal Pradesh filed an affidavit setting out the steps which the State Government and the college authorities had taken to check the ragging of freshers by senior students. The Director of Medical Education-cum-Principal of the Medical College, Simla also filed an affidavit opposing the admission of the writ petition on the ground that the college authorities had taken various steps for the purpose of curbing the evil of ragging and in fact had taken action on at-least two occasions awarding punishment to the students who indulged in ragging by suspending them for a period of 4 to 6 months. The Division Bench, on a consideration of this material placed before it, came to the conclusion that the practice of ragging was prevailing in the Medical College, Simla on a noticeable scale and that ragging took the form of subjecting freshers including female students to inhuman and humiliating treatment degenerating even into physical violence and that the college authorities had not been able to effectively control ragging with the result that the college administration had lost confidence of a seizable section of students, parents and well-wishers as regards its capacity to deal with the problem of ragging. The Division Bench accordingly gave various directions which included a direction to the State Government to constitute a committee consisting of the Vice-Chancellor of the Himachal Pradesh University and the Secretary to the Government, Health Department, inter-alia, to make "recommendations in regard to the curative, preventive and punitive measures to be adopted by the college authorities to control and curb the evil of ragging and the machinery to be set up to enforce these measures". This Committee which we shall for the sake of convenience refer to as the Anti-Ragging Committee, was to complete its work and submit its report within a period of six months from the date of its constitution

3. The Anti-Ragging Committee submitted its Report to the High Court on 26th June, 1984. The Report contained various recommendations intended to control and curb the ragging of freshers by senior students in the Medical College and its hostel. We are concerned here with only one recommendation namely that contained in paragraph 16 of the Report which was in the following terms :

> "In quite a number of States in the country there are Acts on ragging which make ragging a cognizable offence and prescribe the types of punishment commensurate with the crimes committed. The Himachal Pradesh Government could be suggested to initiate such a legislation as early as possible. Pending such a legislation by the State Government, the University authorities could think of incorporating some provisions relating to ragging in the relevant ordinance of Discipline in the Ordinance of the University".

The Division Bench by its order dated 24th July, 1984 gave directions for implementation of the various recommendations made in the Report and so far as recommendation contained in paragraph 16 of the Report was concerned, the Division Bench said : "The Chief Secretary to the State Government will file an affidavit within a period of 3 months from the date of receipt of the writ setting out the action proposed to be taken on the recommendation contained in paragraph 16 (First Part) of the relevant portion of the Report". Though this direction ostensibly did no more than call upon the Chief Secretary to inform the Court as to what action the State Government proposed to take on the recommendations to initiate legislation for curbing ragging, it was, in fact and substance, intended to require the State Government to initiate legislation on the subject. If this direction were merely an innocuous one intended to inform the court whether the State Government intended to take any action on the recommendation to initiate legislation against ragging, no objection could possibly be taken against it, because it would leave the Government free to decide whether or not to initiate legislation in regard to ragging without mandatorily requiring the State Government to do so. But as the subsequent event would show, what the Division Bench intended to achieve by giving this direction was not just to obtain information as to what the State Government proposed to do in the matter but to actually require the State Government to initiate legislation against ragging. That is why, when the Chief Secretary in deference to this direction filed an affidavit stating, inter-alia, that the State Government had "taken notice of the recommendation to initiate legislation in this behalf, if found necessary and so advised", the Division Bench was not satisfied with this statement of the Chief Secretary and declined and proceeded, inter-alia, to reiterate in its order dated 18th September 1984 :

> "The Chief Secretary to the State Government will file an affidavit within a period of 6 weeks from the date of receipt of the Writ setting out the further action taken in the direction of the implementation of the recommendation contained in paragraph 16 (First Part) of the relevant portion of the Report of the Anti-Ragging Committee."

When this direction was given by the Division Bench, it clearly implied that what the Division Bench wanted the State Government to do was to initiate legislation against ragging and for this purpose, time of 6 weeks was granted to the State Government. The State Government thereupon preferred the present appeal with special leave obtained from this Court.

4. We may point out, even at the cost of repetition, that the direction given by the Division Bench in its order dated 24th July 1984 and reiterated in its order dated 18th September 1984 was not an innocuous direction issued merely for the purpose of informing the Court as to what the State Government proposed to do in regard to the recommendation in paragraph 16 of the Report to initiate legislation against ragging. The Division Bench would have been certainly justified in enquiring from the Chief Secretary as to what action the State Government proposed to take in regard to the recommendation of the Anti-Ragging Committee to initiate legislation on the subject of ragging. Such enquiry could have been legitimately made by the Division Bench for the purpose of obtaining information on a matter which the Division Bench regarded, and in our opinion rightly, as necessary for eradicating the evil practice of ragging which is not only subversive of human dignity but also prejudicially affects the interests of the students and the discipline in the Campus and no exception could have been taken to it because it would have left the State Government free to decide whether or not to initiate any legislation on the subject and not mandatorily required the State Government to initiate any such legislation. If such only were the purpose of the direction issued by the Division Bench and the Division Bench did not intend anything more, the Division Bench would have closed the proceedings when the Chief Secretary intimated in his affidavit that the State Government would initiate legislation in this behalf "if found necessary and so advised". But despite this statement made by the Chief Secretary on behalf of the State Government, the Division Bench persisted in reiterating its direction that the Chief Secretary should file and affidavit within a further period of 6 weeks setting out the further action taken by the State Government in the direction of implementation of the recommendation contained in paragraph 16 of the Report. This persistence in reiterating the direction to file an affidavit setting out the action taken by the State Government towards implementation of the recommendation to initiate legislation against ragging, clearly shows that what the Division Bench intended was not merely to obtain informations as to what action the State Government proposed to take but to obligate the State Government to take action by way of initiation of legislation against ragging. The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. This the Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the Court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the Court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution. If the executive is not carrying out any duty laid upon it by the Constitution or the law, the Court can certainly require the executive to carry out such duty and this is precisely what the Court does when it entertains public interest litigation. Where the Court finds, on being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligations under the Constitution or the law, so that the poor and the underprivileged continue to be subjected to exploitation and injustice or are deprived of their social and economic entitlements or that social legislation enacted for their benefit is not being implemented thus depriving them of the rights and benefits conferred upon them, the Court certainly can and must intervene and compel the Executive to carry out its constitutional and legal obligations and ensure that the deprived and vulnerable sections of the community are no longer subjected to exploitation or injustice and they are able to realise their social and economic rights. When the Court passes any orders in public interest litigation, the Court does so not with a view to mocking at legislative or executive authority or in a spirit of confrontation but with a view to enforcing the Constitution and the law, because it is vital for the maintenance of the rule of law that the obligations which are laid upon the executive by the Constitution and the law should be carried out faithfully and no one should go away with a feeling that the constitution and the law are meant only for the benefit of a fortunate few and have no meaning for the large numbers of half-clad, half-hungry people of this country. That is a feeling which should never be allowed to grow. But at the same time the Court cannot usurp the functions assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law making activities of the executive and the legislature. We are therefore of the view that Division Bench was clearly in error in issuing a direction to the Chief Secretary to file an affidavit within 6 weeks setting out the action taken by the State Government with a view to implementing the recommendation contained in paragraph 16 of the Report.

5. There is also one other error into which the Division Bench of the High Court seems to have fallen. The Division Bench of the High Court treated the letter of the guardian of the student along with the letter addressed to the guardian by the student as constituting a Memo of Writ Petition. This was certainly within the jurisdiction of the High Court to do, since it is now settled law that this Court under Article 32 of the Constitution and the High Courts under Article 226 of the Constitution can treat a letter as Writ Petition and taken action upon it. We may of course make it clear that it is not every letter which may be treated as a writ petition by the Supreme Court or the High Court. It is only where a letter is addressed by an aggrieved person or by a public spirited individual or a social action group for enforcement of the constitutional or legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress that the Supreme Court or the High Court would be justified, nay bound, to treat the letter as a Writ Petition. There may also be cases where even a letter addressed for redressal of a wrong done to an individual may be treated as a writ petition where the Supreme Court or the High Court considers it expedient to do so in the interests of justice. This is an innovative strategy which has been evolved by the Supreme Court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and social action groups for combating exploitation and injustice and securing for the under-privileged segments of society their social and economic entitlements. It is a highly effective weapon in the armoury of the law for reaching social justice to the common man. The Division Bench was, therefore, certainly right in entertaining the two letters as a writ petition and no exception can be taken to it, but it was wholly in error in directing that these two letters on which the Division Bench acted should not be placed on the record of the proceedings and the identity of the guardian and the student should not be disclosed. It is difficult to see how any proceedings can be entertained by the Court keeping the petitioner before it anonymous or his identity secret. If the identity of the petitioner is not disclosed, how would the respondent against whom relief is sought ever be able to verify the authenticity of the petitioner and the credibility of the case brought by him. It would be contrary to all canons of fair play and violative of all principles of judicial propriety and administration to entertain a writ petition without disclosing the identity of the petitioner, though the court knows who the petitioner is. We are, therefore, of the opinion that the procedure adopted by the Division Bench was wrong and the Division Bench was not justified in directing that the two letters on which action was initiated by the Division Bench should not be kept in the record of the proceedings and that the identity of the guardian and the student should not be disclosed.

6. We accordingly allow the appeal and set aside the orders dated 24th July, 1984 and 18th September, 1984 in so far as they direct the Chief Secretary to file an affidavit setting out the action taken by the State Government in implementating the recommendation contained in paragraph 16 of the Report of the Anti-Ragging Committee. There will be no order as to costs of the appeal.

SCALE (PIL) 1981-97 1403

PEOPLES UNION OF CIVIL LIBERTIES, DELHI STATE AND OTHERS *Petitioners*

VS

UNION OF INDIA AND OTHERS *Respondents*

CORAM: RANGANATH MISRA, CJI. AND S. MOHAN, J.

PUBLIC INTEREST LITIGATION — MENTALLY ILL — SHAHADARA MENTAL HOME — Scheme for setting up mental hospital-cum-medical college at Delhi — Direction issued to Delhi Administration for taking immediate steps for locating such a hospital — Delhi Administration and Central Govt. directed to provide funds.

1. Learned Attorney General appears pursuant to our direction and places a summary of the position depending upon the reports already submitted to the Court. It appears that though land has been allotted and on principle shifting of the existing hospital has been found to be indispensable, funds to the tune of Rs. 45 crores will be necessary if a full-fledged hospital as envisaged in the scheme is to be established.

2. According to Mr. Attorney General, the Delhi Administration is not in a position to foot the expenses and he says that after the Union of India found out that Rs. 45 crores were necessary, the Central Government has communicated to the Delhi Administration that they have no responsibility in the matter of funding.

3. A hospital of this type for mental patients at the national capital cannot be

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Order dated November 12, 1991 in W.P. (Crl.) No. 2848 of 1983 with W.P. (Crl.) Nos. 1777-78 of 1983, 730 of 1986 and 1618 of 1984.

considered to be unnecessary. A hospital known as NIMHANS at Bangalore has been operating very efficiently. In fact, in the preliminary stages of this scheme a representative of NIMHANS had been associated. Some time back we also directed that in regard to the mental hospital at Kanke, a representative of the NIMHANS should be on the Board constituted by this Court. The reports from the said committee in Bihar clearly indicate that association of the Director from NIMHANS has given a new attitude in the approach of the committee in the matter of rehabilitation of the Kanke hospital.

4. We are of the view that once land has been earmarked and on principle a decision has been taken that the hospital should be shifted and part of it should be converted into a teaching institution while the other part should be a hospital, funding should not stand in the way of locating such a hospital at the national capital. While it may be difficult to find the funds in one year, we are of the view that if this work is taken up as a continuing project spread over a period, the hospital contemplated can certainly be brought into existence. The Delhi Administration on its own can contribute at the rate of Rs. 4 crores per year for five years and similarly the Central Government in the Ministry of Health and even the Planning Commission in its annual provision can take up this project for being funded partially.

5. We are of the view that such a hospital should be located without loss of time. Keeping that in view and while impressing upon the Central Government and the Delhi Administration that the location is a must and requiring the Delhi Administration and the Central Government to contribute either in equal proportion or in such proportion as the Ministry of Health may find possible in five years, the funds may be provided. Spreadover of the scheme in five years may escalate the cost. For that also, provision should be made.

6. A direction is now issued to the Central Government in the Ministry of Health and the Delhi Administration to the effect that appropriate steps may be taken commencing from April 1992 to provide the requisite funds in the manner indicated above and undertake the development of the hospital as a project in accordance with the scheme and complete the same by 1997. This should be the responsibility of the Ministry of Health to monitor. We hope and trust that the Planning Commission would extend its coordinating hand with a view to completing the scheme within time. Appropriate budgetary provision may be made from the coming year in consultation with all concerned governmental agencies.

7. This disposes of all the writ petitions accordingly.

8. Liberty to apply.

SCALE (PIL) 1981-97 1404
MAHESH CHAND BISHT & ANR. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI. AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — PARAMETERS OF — Whether the petitioners should be permitted to represent the cause which is brought in public interest — Court orders that it would be decided on the petitioners furnishing full particulars

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Order dated December 15, 1997 in W.P. (C) No. 648/97 [1997(7) SCALE (SP) 22]

on an affidavit of their concern and the purpose to agitate the same in the Court — Court further observed that the question of appointment of A.C. would also be considered at that time.

[Ed. Note: The constitution of the Garhwal Water Institute to supply potable drinking water to the hilly towns and villages of the Garhwal region of the State of Uttar Pradesh consisting of various Districts and villages of the region. It is alleged that crores of rupees were pumped in by the Union of India, the State of Uttar Pradesh and the World Bank to implement the schemes of the supply of potable drinking water to the residents of this region. It is further stated that the respondent/Institute (Garhwal Water Institute) did not do its duty honestly and efficiently and rampant corruption prevailed and as a result of which the petitioners and other residents of this region are suffering from the want for potable drinking water. That even the residents were asked to make deposits for water connections, but no water connections were given inspite of the deposit.]

1. The question whether the petitioners should be permitted to represent the cause which is brought in public interest would be decided on the petitioners furnishing full particulars on an affidavit of their concern and the purpose to agitate the same in the Court. The affidavit would be filed within two weeks. The question of appointment of A.C. would also be considered at that time.

2. Issue notice returnable on 5.1.98.

SCALE (PIL) 1981-97 1405
MRS. KALPANA BEHERA *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: J.S. VERMA CJI, S.B. MAJMUDAR AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CUSTODIAL DEATH — Court records that the amount of Rs. 2,10,000/- quantified by the learned District Judge, Cuttack as compensation will be paid, if not already paid to the widow and the five minor children of deceased Gopal Behera — The payment of compensation be made to the widow and the minor children of the deceased through the court of Sub-Divisional Magistrate, Bhubaneshwar who will ensure payment of the amount directly to the claimants by depositing of the same in a nationalised bank within two months.

Referred: Nilabati Behera (Smt.) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) vs State of Orissa & Ors. 1993(2) SCC 746 = 1993(2) SCALE 309.

1. We are informed that after the investigation made by the State Police, a charge-sheet has been filed and Sh. T. Das - the concerned Deputy Superintendent of Police of the C.B.I. is being prosecuted for offences punishable under Section 341, 343 and 306 of the Indian Penal Code in the competent court. We are also informed that the amount of Rs. 2,10,000/- quantified by the learned District Judge, Cuttack as

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Order dated October 13, 1997 in W.P. (Crl.) No. 176 of 1995. [1997(7) SCALE (SP) 24] compensation will be paid, if not already paid to the widow and the five minor children of deceased Gopal Behera. The payment of compensation be made to the widow and the minor children of the deceased through the court of Sub-Divisional Magistrate, Bhubaneshwar who will ensure payment of the amount directly to the claimants by depositing of the same in a nationalised bank within two months. The order of compensation to the widow and children of the deceased is on the same terms as directed in *Nilabati Behera (Smt.) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) vs. State of Orissa & Ors.* (1993) 2 SCC 746.

2. The writ petition stands disposed of.

3. We are thankful to the learned amicus and other counsel for the assistance rendered in disposing of the case.

SCALE (PIL) 1981-97 1406

VINEET NARAIN & OTHERS *Petitioners*

VS

UNION OF INDIA & ANOTHER. *Respondents*

CORAM: J.S. VERMA CJI, S.P. BHARUCHA AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — HAWALA CASE — CONSTITUTION — ARTICLES 32 AND 142 — POLICE ACT, 1861 — DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946 — SECTION 3 & 4(1) — G.O.I. DIRECTIVE NO. 4.7(3) — On 25th March, 1991, one Ashfak Hussain Lone, alleged to be an official of the terrorist organisation Hizbul Mujahideen, was arrested in Delhi — Consequent upon his interrogation, raids were conducted by the Central Bureau of Investigation (CBI) on the premises of Surender Kumar Jain, his brothers, relations and businesses — Along with Indian and foreign currency, the CBI seized two diaries and two note books from the premises — They contained detailed accounts of vast payments made to persons identified only by initials — The initials corresponded to the initials of various high ranking politicians, in power and out of power, and of high ranking bureaucrats — Nothing having been done in the matter of investigating the Jains or the contents of their diaries, the present writ petitions were filed on 4th October, 1993, in the public interest under Article 32 of the Constitution of India — The gist of the allegations in the writ petitions is that Government agencies like the CBI and the revenue authorities had failed to perform their duties and legal obligations inasmuch as they had failed to investigate matters arising out of the seizure of the "Jain diaries" that this was done with a view to protect the persons involved, who were very influential and powerful; that the matter disclosed a nexus between crime and corruption at high places in public life and it posed a serious threat to the integrity, security and economy of the nation; that probity in public life, the rule of law and the preservation of democracy required that the Government agencies be compelled to only perform their legal obligations and to proceed in accordance with law against every person involved, irrespective of where he was placed in the political hierarchy — Whether it is within the domain of judicial review and it could be an effective instrument for activating the investigative process

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Judgment dated December 18, 1997 in W.P. (Crl.) Nos. 340-343 of 1993. [1997(7) SCALE 656]

which is under the control of executive — Disposing the appeals, Held,

A. This case has helped to develop a procedure within the discipline of law for the conduct of such a proceeding in similar situations. It has also generated awareness of the need of probity in public life and provided a mode of enforcement of accountability in public life. Even though the matter was brought to the court by certain individuals claiming to represent public interest, yet as the case progressed, in keeping with the requirement of public interest, the procedure devised was to appoint the petitioners' counsel as the amicus curiae and to make such orders from time to time as were consistent with public interest. Intervention in the proceedings by everyone else was shut out but permission was granted to all, who so desired, to render such assistance as they could, and to provide the relevant material available with them to the amicus curiae for being placed before the court for its consideration. In short, the proceedings in this matter have had great educative value and it does appear that it has helped in future decision making and functioning of the public authorities. (Para 1).

B. Once the CBI is empowered to investigate an offence generally by its specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of "superintendence" in Section 4(1). (Para 42).

C. It is, therefore, the notification made by the Central Government under Section 3 which confers and determines the jurisdiction of the CBI to investigate an offence; and once that jurisdiction is attracted by virtue of the notification under Section 3, the actual investigation is to be governed by the statutory provisions under the general law applicable to such investigations. This appears to us the proper construction of Section 4(1) in the context, and it is in harmony with the scheme of the Act, and Section 3 in particular (Para 43)

D. The Single Directive has to be examined in this background. The law does not classify offenders differently for treatment there under including investigation of offences and prosecution for offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The Single Directive is applicable only to certain persons above the specified level who are described as "decision making officers". The question is whether any distinction can be made for them for the purpose of investigation of an offence of which they are accused. (Para 47).

E. The Single Directive cannot, therefore, be upheld as valid on the ground of it being permissible in exercise of the power of superintendence of the Central Government under Section 4(1) of the Act. The matter has now to be considered de hors the Single Directive. (Para 50).

F. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. (Para 52).

G. It is in the discharge of this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an in-depth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted.

The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. (Para 52).

H. There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition. The recent experience in the field of prosecution is also discouraging. To emphasise this point, some reference has to be made to a large number of prosecutions launched as a result of monitoring by the Court in this matter which have resulted in discharge of the accused at the threshold. It took several years for the CBI to commence investigation and that too as a result of the monitoring by this Court. It is not as if the CBI, on conclusion of the investigation, formed the opinion that no case was made out for prosecution so that the earlier inaction may have been justified. (Para 53).

I. On this basis, we now proceed to give the directions enumerated hereafter for rigid compliance till such time as the legislature steps in to substitute them by proper legislation. These directions made under Article 32 read with Article 142 to implement the rule of law wherein the concept of equality enshrined in Article 14 is embedded, have the force of law under Article 141 and, by virtue of Article 144, it is the duty of all authorities, civil and judicial, in the territory of India to act in aid of this Court. In the issuance of these directions, we have accepted and are reiterating as far as possible the recommendations made by the IRC. (Para 56).

J. The adverse impact ot lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries (Para 60).

K. Of course, the necessity of desirable procedures evolved by court rules to ensure that such a litigation is properly conducted and confined only to matters of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights guaranteed in the Constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has ultimately the deleterious effect of eroding the Indian polity. (Para 61).

L. In the result, we strike down Directive No. 4.7(3) of the Single Directive quoted above and issue the above directions, which have to be construed in the light of the earlier discussion. The Report of the Independent Review Committee (IRC) and its recommendations which are similar to this extent can be read, if necessary, for a proper appreciation of *these directions. To the extent we agree with the conclusions and recommendations of the IRC, and that is a large area, we have adopted the same in the formulation of the above directions. These directions require the strict compliance/adherence of the Union of India and all concerned. (Para 65).*

M. Court made it clear that Shri Sharma is not to be continued as CBI Director beyond the date of expiry of his present tenure. (Para 67).

N. Court also issued consequential directions (Para 62).

Referred: K. Veeraswami vs Union of India and Others, 1991(3) SCC 655 = 1991 (2) SCALE 150; Union of India and Others vs Sushil Kumar Modi and Others, (1997 (4) SCC 770 = 1997(1) SCALE 432; State of Bihar and Another etc. vs J.A.C. Saldanha and Others, 1980(1) SCC 554; Erach Sam Kanga etc. vs Union of India & Anr. (W.P.No. 2632 of 1978); Lakshmi Kant Pandey vs Union of India (in re: Foreign Adoption), 1984(2) SCC 244; State of West Bengal & Ors. etc. vs Sampat Lal & Ors. etc., 1985(2) SCR 256; Union Carbide Corporation and Others vs Union of India and Others, 1991 (4) SCC 584 = 1991(2) SCALE 675; Delhi Judicial Service Association etc. vs State of Gujarat and Others etc. (Nadiad Case), 1991(4) SCC 406 = 1991(2) SCALE 501; Delhi Development Authority vs Skipper Construction Co. (P) Ltd. And Another, 1996(4) SCC 622 = 1996(4) SCALE 202; Dinesh Trivedi, M.P. and Others vs Union of India and Others, 1997(4) SCC 306 = 1997(3) SCALE 117; Supreme Court Advocates-on-Record Association and Others vs Union of India (IInd Judges Case), 1993(4) SCC 441 = 1993 Supp. SCALE 67; Vishakha and Others vs State of Rajasthan and Others, 1997(6) SCC 241 = 1997(1) SCALE 458; R vs Secretary of State for Foreign and Commonwealth Affairs, (1995) 1 WLR 386.

Verma, CJI.— These writ petitions under Article 32 of the Constitution of India brought in public interest, to begin with, did not appear to have the potential of escalating to the dimensions they reached or to give rise to several issues of considerable significance to the implementation of rule of law, which they have, during their progress. They began as yet another complaint of inertia by the Central Bureau of Investigation (CBI) in matters where the accusation made was against high dignitaries. It was not the only matter of its kind during the recent past. The primary question was: Whether it is within the domain of judicial review and it could be an effective instrument for activating the investigative process which is under the control of executive? The focus was on the question, whether any judicial remedy is available in such a situation? However, as the case progressed, it required innovation of a procedure within the constitutional scheme of judicial review to permit intervention by the court to find a solution to the problem. This case has helped to develop a procedure within the discipline of law for the conduct of such a proceeding in similar situations. It has also generated awareness of the need of probity in public life and provided a mode of enforcement of accountability in public life. Even though the matter was brought to the court by certain individuals claiming to represent public interest, yet as the case progressed, in keeping with the requirement of public interest, the procedure devised was to appoint the petitioners' counsel as the amicus curiae and to make such orders from time to time as were consistent with public interest. Intervention in the proceedings by everyone else was shut out but permission was granted to all, who so desired, to render such assistance as they could, and to provide the relevant material available with them to the amicus curiae for being placed before the court for its consideration. In short, the proceedings in this matter have had great educative value and it does appear that it has helped in future decision making and functioning of the public authorities.

2. We must at the outset place on record our great appreciation of the assistance rendered by the amicus curiae, Shri Anil B. Divan and the lawyers assisting him, namely, Shri Abani Kumar Sahu, Shri Anil Kumar Panda, Shri Mukul Mudgal, Shri Anil Nauriya and also Ms. Latha Krishnamurthy. We also place on record equal appreciation of the law officers and the team which has assisted them in these proceedings. At the commencement of the proceedings, the then Solicitor General Shri Dipankar P. Gupta appeared for the Union of India and the government agencies. Later after Shri Dipankar P. Gupta demitted office, the Attorney General Shri Ashok H. Desai appeared in this case throughout. The law officers and their term of assistants, namely, Shri K.N. Bhat, Additional Solicitor General, Shri Pallav Shishodia, Shri P. Parmeswaran and Ms. Anuradha Bindra, rendered very able assistance throughout and discharged the duty expected of law officers. All of them, at great personal inconvenience and expense, rose to extraordinary heights in keeping with the true traditions of the Bar. In essence, everyone of them discharged the role of amicus curiae, without, at any stage, adopting the adversarial stance. If it has been possible to achieve some success in these proceedings to improve and innovate the procedure and fructify new ideas for betterment of the polity, it is only because of the positive response of the Bar and the assistance rendered by it. We must also record our appreciation of the officers of the CBI and the Revenue Department who actively participated in these proceedings and showed a definite improvement in their perception of the rule of law as the case progressed; and their ability to perform improved once they were assured of protection in the honest discharge of their duties.

3. This experience revealed to us the need for the insulation of these agencies from any extraneous influence to ensure the continuance of the good work they have commenced. It is this need which has impelled us to examine the structure of these agencies and to consider the necessary steps which would provide permanent insulation to the agencies against extraneous influences to enable them to discharge their duties in the manner required for proper implementation of the rule of law. Permanent measures are necessary to avoid the need of every matter being brought to the court for taking ad hoc measures to achieve the desired results. This is the occasion for us to deal with the structure, constitution and the permanent measures necessary for having a fair and impartial agency. The faith and commitment to the rule of law exhibited by all concerned in these proceedings is the surest guarantee of the survival of democracy of which rule of law is the bedrock. The basic postulate of the concept of equality: 'Be you ever so high, the law is above you', has governed all steps taken by us in these proceedings.

Facts

4. A brief narration of the facts of this case is necessary: On 25th March, 1991, one Ashfak Hussain Lone, alleged to be an official of the terrorist organisation Hizbul Mujahideen, was arrested in Delhi. Consequent upon his interrogation, raids were conducted by the Central Bureau of Investigation (CBI) on the premises of Surender Kumar Jain, his brothers, relations and businesses. Along with Indian and foreign currency, the CBI seized two diaries and two note books from the premises. They contained detailed accounts of vast payments made to persons identified only by initials. The initials corresponded to the initials of various high ranking politicians, in power and out of power, and of high ranking bureaucrats. Nothing having been done in the matter of investigating the Jains or the contents of their diaries, the present writ petitions were filed on 4th October, 1993, in the public interest under Article 32 of the Constitution of India.

5. The gist of the allegations in the writ petitions is that Government agencies like the CBI and the revenue authorities had failed to perform their duties and legal obligations inasmuch as they had failed to investigate matters arising out of the seizure of the "Jain diaries"; that the apprehension of terrorists had led to the discovery of financial support to them by clandestine and illegal means using tainted funds obtained through `havala' transactions; that this had also disclosed a nexus between politicians, bureaucrats and criminals, who were recipients of money from unlawful sources, given for unlawful consideration; that the CBI and other Government agencies had failed to investigate the matter, take it to its logical conclusion and prosecute all persons who were found to have committed an offence; that this was done with a view to protect the persons involved, who were very influential and powerful; that the matter disclosed a nexus between crime and corruption at high places in public life and it posed a serious threat to the integrity, security and economy of the nation; that probity in public life, the rule of law and the preservation of democracy required that the Government agencies be compelled to only perform their legal obligations and to proceed in accordance with law against every person involved, irrespective of where he was placed in the political hierarahy. The writ petitions prayed, inter alia, for the following reliefs:

> "[a] that the above said offences disclosed by the facts mentioned in the petition be directed to be investigated in accordance with law;
>
> [b] that this Hon'ble Court may be pleased to appoint officers of the police or others in whose integrity, independence and competence this Hon'ble Court has confidence for conducting and/or supervising the said investigation;
>
> [c] that suitable directions be given by this Hon'ble Court and orders issued to ensure that the culprits are dealt writ according to law;
>
> xx xx xx
>
> [d] *(sic)* directions be given so that such evil actions on the of the investigating agencies and their political *(sic)* are not repeated in future."

6. It will be seen that the reliefs sought in the writ petitions fall into two broad classes. The first class relates to investigations in the matter of the "Jain diaries". The second class [prayer (f)] relates to the manner in which investigations of offences of a similar nature that may occur hereafter should be conducted.

Procedure adopted

7. We have taken the view that, given the political personalities of the people to be investigated in the "Jain diaries" case and the time already lost in commencing the investigations, it was advantageous not to hear the matter through and issue a writ of mandamus, leaving it to the authorities to comply with it, but to keep the matter pending while the investigations were being carried on, ensuring that this was done by monitoring them from time to time and issuing orders in this behalf. Our reasoned orders are dated 18.4.1995, 16.1.1996 [1996 (2) Scale (SP) 42], 30.1.1996 [1996 (2) SCC 199], 22.2.1996 [1996 (2) Scale (SP) 84], 1.3.1996 [1997 (4) SCC 778], 13.3.1996 [1996 (4) Scale (SP) 3], 1.5.1996 [1996 (4) Scale (SP) 56], 26.7.1996 [1996 (6) Scale (SP) 24], 9.7.1997 [1997 (5) Scale 254]. Orders in similar matters, being the orders dated 12.2.1996 [1996 (3) Scale

(SP) 35], 2.4.1996, 26.4.1996 [1996 (4) Scale (SP) 71], 26.7.1996 [1996 (6) Scale (SP) 23] and 7.10.1996 [1996 (6) SCC 354] in Writ Petition (Civil) No. 640 of 1995 - Anukul Chandra Pradhan vs. Union of India and Others - and orders dated 24.2.1997 and 18.3.1997 in Writ Petition (Civil) No. 38 of 1997 - Dr. Subramaniam Swamy vs. Director, CBI & Ors., are also relevant.

8. The sum and substance of these orders is that the CBI and other Governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated, that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might to accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of 'continuing mandamus'.

9. Even after this matter was brought to the court complaining of the inertia of CBI and the other agencies to investigate into the offences because of the alleged involvement of several persons holding high offices in the executive, for quite some time the disinclination of the agencies to proceed with the investigation was apparent. The accusation, if true, revealed a nexus between high ranking politicians and bureaucrats who were alleged to have been funded by a source linked with the source funding the terrorists. In view of the funding also through foreign currency, some undesirable foreign elements appeared to be connected. This revealed a grave situation posing a serious threat even to the unity and integrity of the nation. The serious threat posed to the Indian polity could not be underscored. The obvious need for an expeditious and thorough probe which had already been delayed for several years could not but be countenanced. The continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer. In view of the persistence of that situation, it became necessary as the proceedings progressed to make some orders which would activate the CBI and the other agencies to at least commence a fruitful investigation. Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation. It was, therefore, decided to direct the CBI and other agencies to complete the investigation expeditiously, keeping the court informed from time to time of the progress of the investigation so that the court retained siesin of the matter till the investigation was completed and the chargesheets were filed in the competent court for being dealt with, thereafter, in accordance with law.

10. The first order to this effect was made on 5.12.1994 when the CBI Director was required to personally supervise the investigations carried on by the CBI as the overall incharge and to report to the court the progress made from time to time. The true scope of the matter was indicated in an order dated 30th January, 1996 [reported in 1996 (2) SCC 199] as under:

> "The true scope of this writ petition has been indicated during the earlier hearings. At this stage, when some charge sheets have been filed in the Special Court and there is considerable publicity in the media regarding this matter, with some speculation about its true scope, it is appropriate to make this order to form a part of the record.
>
> The gist of the allegations in the writ petition are that Government agencies, like the CBI and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so called "Jain Diaries" in certain raids conducted by the CBI. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means, by use of tainted funds obtained through `havala' transactions; that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given for unlawful considerations; that the CBI and other Government agencies have failed to fully investigate into the matter and take it to the logical end point of the trail and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who are very influential and powerful in the present set up; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved,irrespective of the height at which he is placed in the power set up.
>
> The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law : "Be you ever so high, the law is above you". Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the Government agencies.
>
> In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.
>
> In case of persons against whom a prima facie case is made out and a charge sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law.
>
> However, if in respect of any such person the final report after full investigation is that no prima facie case is made out to

proceed further, so that the case must be closed against him, that report must be promptly submitted to this Court for its satisfaction that the concerned authorities have not failed to perform their legal obligations and have reasonably come to such conclusion. No such report having been submitted by the CBI or any other agency till now in this Court, action on such a report by this Court would be considered, if and when that occasion arises. We also direct that no settlement should be arrived at nor any offence compounded by any authority without prior leave of this Court.

We may add that on account of the great public interest involved in this matter, the CBI and other Government agencies must expedite their action to complete the task and prevent pendency of this matter beyond the period necessary. It is needless to observe that the results achieved so far do not match the available time and opportunity for a full investigation ever since the matter came to light. It is of utmost national significance that no further time is lost in completion of the task."

Relevant portions of other significant orders dated 1.3.1996 [reported in 1997 (4) SCC 778] and 9.7.1997 [reported in 1997 (5) Scale 254] read as under:

Ordered dated 01.03.1996:

"... ... ...

V. *Criminal Misc. Petition Nos. 1153-56/1996:*

We have heard Shri Anil Diwan and the learned Solicitor General. Insofar as the larger relief of suitable guidelines is sought therein, that matter is deferred for consideration at the appropriate later stage of these proceedings. As for the interim relief claimed in the application, it is sufficient for us to direct as stated hereafter.

To eliminate any impression of bias and avoid erosion of credibility of the investigations being made by the C.B.I. and any reasonable impression of lack of fairness and objectivity therein, it is directed that the C.B.I. would not take any instructions from, report to, or furnish any particulars thereof to any authority personally interested in or likely to be affected by the outcome of the investigations into any accusation. This direction applies even in relation to any authority which exercises administrative control over the C.B.I. by virtue of the office he holds, without any exception. We may add that this also accords with what the Learned Solicitor General has very fairly submitted before us about the mode of functioning of the C.B.I. in this matter.

We also place on record the further statement made by the learned Solicitor General on instructions from the C.B.I. Director that neither the C.B.I. Director nor any of his officers has been reporting to any authority about any particulars relating to these investigations. No further direction in this behalf is necessary at this stage."

Order dated 09.07.1997:

"The question pertaining to interference with or shifting of any of the officer in any of the investigative teams of the C.B.I. or any other connected investigative agency such as the Enforcement Directorate in the several matters under investigation by them which are being monitored by this Court and some of the High Courts, is under consideration by this Court in this matter which is being heard by a 3-Judge Bench and for this reason the same question even though raised in some other pending matters in this Court is not being considered therein. It is, therefore,

> inappropriate that the same question or any question connected with it in any manner be entertained or dealt with by any other court including any High Court in any of the matters before it. It has become necessary to say so in view of the fact that we are informed that the same question in different forms is being raised in some other courts including High Courts by different persons. The question being comprehensively dealt with by this 3-Judge Bench in this matter by this Court, we make it clear that no other court including any High Court will entertain or deal with the same in any direct or indirect manner. Such a course is essential in public interest.

11. It is significant that the machinery of investigation started moving as a result of these orders and after investigation of the allegations made against several persons on the basis of the contents of the Jain Diaries, chargesheets were filed in the competent court in the first instance against 14 persons, as reported to the court on 22.2.1996. Chargesheets against many other persons were filed in the competent court thereafter as reported later from time to time. In all, 34 chargesheets against 54 persons have been filed on this basis. Thus, as indicated earlier, the purpose of these proceedings to the extent of the complaint of inertia of the investigating agencies came to an end with the filing of these chargesheets, since the merits of the accusation against each individual has, thereafter, to be considered and dealt with by the competent court at the trial, in accordance with law. Trial in the competent court is now a separate proceeding.

12. After the commencement of these proceedings, some other matters of a similar nature came to this Court in which the inaction of the investigating agencies to investigate into some serious offences was alleged. Two such significant matters are Writ Petition (Civil) No. 640 of 1995 - Anukul Chandra Pradhan vs. Union of India and Others - and Writ Petition (Civil) No. 38 of 1997 - Dr. Subramaniam Swamy vs. Director, CBI & Ors. These cases revealed a serious situation eroding the rule of law, where the accusation was against persons holding high offices and wielding power. Relevant portions of some significant orders made in the above two cases read as under:-

> Anukul Chandra Pradhan
>
> *Order dated 12.02.1996 [reported in 1996 (3) Scale (SP) 35]:*
>
> "We do not consider it appropriate to permit any intervention in this matter. Shri Anil Diwan has been requested by us to appear as Amicus Curiae in this matter. He has kindly agreed to do so. It is open to anyone who so desires, to assist Shri Anil Diwan and to make available to him whatever material he chooses to rely on in public interest to enable Shri Diwan to effectively and properly discharge functions as Amicus Curiae. Except for this mode of assistance to the learned Amicus Curiae, we do not permit any person either to be impleaded as party or to appear as an intervenor. In our opinion, this is necessary for expeditious disposal of the matter and to avoid the focus on the crux of the matter getting diffused in the present case by the appearance of many persons acting independently in the garb of public interest.
>
> *Order dated 02.04.1996*
>
> "... ... ...
>
> Learned S.G. as well as Shri Anil Diwan, learned counsel, are heard. The Secretary, Revenue Shri Sivaraman, the C.B.I. Director - Shri K. Vijay Rama Rao and the Commissioner of Police - Shri Nikhil Kumar are also present. We direct that from now each of these three officers

would be overall incharge of the investigations which are being carried on by their respective departments pertaining to the matters within the scope of this Writ Petition. Learned S.G. on instructions prayed for deferring the further hearing to enable the above officers to report the progress made in the investigations by these agencies on the next date."

Order dated 07.10.1996 [reported in 1996 (6) SCC 354]:

"... ... ...

In accordance with the directions so given, it has been reported to us that chargesheets have been filed by the C.B.I. in two cases and the Delhi Police in one case which they were investigating. These cases are :

1) St. Kitts' Forgery Case.
(Chargesheet filed by C.B.I.)
2) Lakhubhai Pathak Cheating Case.
(Chargesheet filed by C.B.I.)
3) Rajendra Jain Case
(Chargesheet filed by Delhi Police)

In view of the fact that chargesheet has been filed under Section 173 Criminal Procedure Code in each of the above three cases in the competent court, it is that court which is now to deal with the case on merits, in accordance with law. Any direction considered necessary for further investigation, if any, or to proceed against any other person who also appears to have committed any offence in that transaction, is within the domain of the concerned court according to the procedure prescribed by law. The purpose of this proceeding is to command performance of the duty under law to properly investigate into the accusation of commission of the crime and to file a chargesheet in the competent court, if a prima facie case is made out. This purpose has been served in the above three cases, in respect of which no further action in this proceeding is called for.

Accordingly, this proceeding has come to an end, in so far as it relates to the above three criminal cases. For the remaining part, it is to continue till the end result prescribed by law is achieved. The concerned court in which the chargesheet has been filed has to proceed entirely in accordance with law without the slightest impression that there is any parallel proceeding in respect of the same matter pending in this court.

We may also observe, that the concerned court dealing with the above matters has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of this kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21.

A note of caution may be appropriate. No occasion should arise for an impression that the publicity attaching to there matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement, undoubtedly has to be kept in view during the entire trial. It is reiterated, that any observation made by this Court for the purpose of the proceedings pending here has no bearing on the merits of the accusation, and is not to influence the trial in any manner. Care must be taken to ensure that the credibility of the judicial process is not undermined in any manner. This proceeding is to continue in respect of the remaining matters only which are incomplete.

Dr. Subramaniam Swamy

Order dated 24.02.1997:

"... ... ...

It is also made clear to the petitioner that the petition having been entertained as a public interest litigation in view of the public interest involved, the locus of the petitioner is confined only to assisting the court through amicus curiae appointed by the court and that the petitioner has no independent or additional right in the conduct or hearing of the proceedings hereafter.

We request Shri Anil B. Divan, Sr. Advocate to appear as amicus curiae in this case. ...."

Order dated 18.03.1997:

" ....

In accordance with the practice followed by the Court in other similar pending matters, we also direct that any person wishing to bring any material or point before this Court for consideration in this behalf may do so by furnishing the same to Shri Anil B. Divan, the learned amicus curiae, who would take the necessary steps in accordance with the need and relevance thereof, to place it before this Court in this proceeding."

In-camera proceedings

13. During the monitoring of the investigations, the Solicitor General/Attorney General, from time to time, reported the progress made during the course of investigation, in order to satisfy us that the agencies were not continuing to drag their feet and the "continuing mandamus" was having the effect of making the agencies perform their statutory function. The procedure adopted by us was merely to hear what they had to report or the CBI Director and the Revenue Secretary had to tell us to be satisfied that the earlier inaction was not persisting. We maintained this stance throughout. We also ensured that no observation of any kind was made by us nor was any response given which may be construed as our opinion about the merits of the case or the accusation against any accused. We also did not identify or name any accused during performance of this task. At the very outset, the then Solicitor General Shri Dipankar P. Gupta requested that a part of the proceedings be held `in camera' to enable him to state certain facts and, if necessary, place before us material, the secrecy of which was required to be maintained for integrity of the investigation and also to avoid any prejudice to the concerned accused. In these circumstances, such a procedure was adopted only to the extent necessary for this purpose, in the interest of justice, and that is how a part of some hearings was held in camera. This innovation in the procedure was made, on request, to reconcile the interest of justice with that of the accused.

14. It is settled that the requirement of a public hearing in a court of law for a fair trial is subject to the need of proceedings being held in camera to the extent necessary in public interest and to avoid prejudice to the accused. We consider it appropriate to mention these facts in view of the nature of these proceedings wherein innovations in procedure were required to be made from time to time to sub-serve the public interest, avoid any prejudice to the accused and to advance the cause of justice. The medium of "continuing mandamus", was a new tool forged because of the peculiar needs of this matter.

15. Inertia was the common rule whenever the alleged offender was a powerful person. Thus, it became necessary to take measures to ensure permanency in the remedial effect to prevent reversion to inertia of the agencies in such matters.

16. Everyone against whom there is

reasonable suspicion of committing a crime has to be treated equally and similarly under the law and probity in public life is of great significance. The constitution and working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons were involved. For this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt, the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive, is imperative. It is this exercise which became necessary in these proceedings for the future. This is the surviving scope of these writ petitions.

Point for consideration

17. As a result of the debate in these proceedings and the experience gained thereby the Union of India came to realise that an in-depth study of the selection of personnel of these agencies, particularly the CBI and the Enforcement Directorate of the Revenue Department, and their functioning is necessary. The Government of India, sharing this perception, by an Order No.S/7937/SS(ISP)/93 dated 9th July, 1993 constituted a Committee headed by the then Home Secretary Shri N.N. Vohra to take stock of all available information about the activities of crime syndicates/mafia organisations which had developed links with, and were being protected by, government functionaries and political personalities. It was stated that on the basis of recommendations of the Committee the Government shall determine the need, if any, to establish a special organisation/agency to regularly collect information and pursue cases against such elements. The Committee was headed by the then Home Secretary Shri N.N. Vohra and had as its Members-Secretary (Revenue), Director, Intelligence Bureau, Director, CBI, Joint Secretary (PP), Ministry of Home Affairs. The Committee gave its recommendations dated 5.10.1993. It has made scathing comments and has painted a dismal picture of the existing scene. It has said that the network of the mafia is virtually running a parallel government pushing the State apparatus into irrelevance. The committee recommended the creation of a nodal agency under the Ministry of Home Affairs for the collation and compilation of all information received from Intelligence Bureau (IB), Central Bureau of Investigation (CBI) and Research and Analysis Wing (R&AW) and the various agencies under the Department of Revenue. The report is significant for the dismal picture of the existing scenario which discloses a powerful nexus between the bureaucracy and politicians with the mafia gangs, smugglers and the underworld. The report of the Vohra Committee is the opinion of some top bureaucrats and it confirmed our worst suspicions focusing the need of improving the procedure for constitution and monitoring the functioning of intelligence agencies. There is, thus, no doubt that this exercise cannot be delayed further.

18. The same perception of the Government of India led it to constitute another Committee by Order No. 226/2/97-AVD-II dated 8th September, 1997 comprising of Shri B.G. Deshmukh, former Cabinet Secretary, Shri N.N. Vohra, Principal Secretary to the Prime Minister and Shri S.V. Giri, Central Vigilance Commissioner, called the Independent Review Committee (IRC). The order reads as under:

> "WHEREAS the Government of India is of the opinion that it is necessary to set up a Committee for going into the matters mentioned hereinafter;
>
> 2. NOW, THEREFORE, a Committee of the following is hereby set up:-
>
> (i) Shri B.G. Deshmukh,

Former Cabinet Secretary
(ii) Shri N.N. Vohra,
Principal Secretary to the Prime Minister
(iii) Shri S.V. Giri
Central Vigilance Commissioner
Shri N.N. Vohra shall act as Convenor.

3. The terms of reference of the Committee are as under:-

(i) To monitor the functioning of the nodal agency established by the Ministry of Home Affairs in pursuance of the recommendations of the Vohra Committee Report.

(ii) To examine the present structure and working of the Central Bureau of Investigation (CBI), the Enforcement Directorate and related agencies to suggest the changes, if any, needed to ensure :

[a] that offences alleged to have been committed by any person, particularly those in positions of high authority, are registered, investigated and prosecuted fairly and expeditiously, ensuring against, inter alia, external pressure, arbitrary withdrawals or transfers of personnel etc., and ensuring adequate protection to the concerned functionaries to effectively discharge their duties and responsibilities;

[b] that there are sufficient checks and balances to ensure that the powers of investigation and prosecution are not misused;

[c] that there are no arbitrary restrictions to the initiation of investigations or launching of prosecutions.

4. The Committee should give its report with regard to the items mentioned in paragraph 3(ii) above within a period of 3 months."

19. Before we refer to the report of the Independent Review Committee (IRC), it would be appropriate at this stage to refer to the Single Directive issued by the Government which requires prior sanction of the designated authority to initiate the investigation against officers of the Government and the Public Sector Undertakings (PSUs), nationalised banks above a certain level. The Single Directive is a consolidated set of instructions issued to the CBI by the various Ministries/Departments in this behalf. It was first issued in 1969 and thereafter amended on many occasions. The Single Directive contains certain instructions to the CBI regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants. Directive No. 4.7(3) in its present form is as under:-

"4.7(3)(i) In regard to any person who is or has been a decision making level officer (Joint Secretary or equivalent or above in the Central Government or such officers as are or have been on deputation to a Public Sector Undertaking; officers of the Reserve Bank of India of the level equivalent to Joint Secretary or above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the Bank officers who are one level below the Board of Nationalised Banks), there should be prior sanction of the Secretary of the Ministry/Department concerned before SPE takes up any enquiry (PE or RC), including ordering search in respect of them. Without such sanction, no enquiry shall be initiated by the SPE.

(ii) All cases referred to the administrative Ministries/ Departments by CBI for obtaining necessary prior sanction as aforesaid, except those pertaining to any officer of the rank of

Secretary or Principal Secretary, should be disposed of by them preferably within a period of two months of the receipt of such a reference. In respect of the officers of the rank of Secretary or Principal Secretary to Government, such references should be made by the Director, CBI to the Cabinet Secretary for consideration of a Committee consisting of the Cabinet Secretary as its Chairman and the Law Secretary and the Secretary (Personnel) as its members. The Committee should dispose of all such references preferably within two months from the date of receipt of such a reference by the Cabinet Secretary.

(iii) When there is any difference of opinion between the Director, CBI and the Secretary of the Administrative Ministry/Department in respect of an officer up to the rank of Additional Secretary or equivalent, the matter shall be referred by CBI to Secretary (Personnel) for placement before the Committee referred to in Clause (ii) above. Such a matter should be considered and disposed of by the Committee preferably within two months from the date of receipt of such a reference by Secretary (Personnel).

(iv) In regard to any person who is or has been Cabinet Secretary, before SPE takes any step of the kind mentioned in (i) above the case should be submitted to the Prime Minister for orders."

20. We were informed that the above Directive, in its application, is limited to officials at decision making levels in the Government and certain other public institutions like the RBI, SEBI, nationalised banks, etc. and its scope is limited to official acts. The stated objective of the Directive is to protect decision making level officers from the threat and ignominy of malicious and vexatious inquiries/investigations. It is said that such protection to officers at the decision making level is essential to protect them and to relieve them of the anxiety from the likelihood of harassment for taking honest decisions. It was also stated that absence of any such protection to them could adversely affect the efficiency and efficacy of these institutions because of the tendency of such officers to avoid taking any decisions which could later lead to harassment by any malicious and vexatious inquiries/investigations. It was made clear that the Directive does not extend to any extraneous or non-official acts of the government functionaries and a time frame has been prescribed for grant of sanction in such cases to prevent any avoidable delay.

21. Two questions arise in relation to Directive No. 4.7(3) of the Single Directive, namely, its propriety/legality and the extent of its coverage, if it be valid.

22. The learned Attorney General categorically stated in response to our repeated query that the Single Directive acts as a restriction only on the CBI but is inapplicable against the general power of the State Police to register and investigate any such offence under the general law, i.e., Code of Criminal Procedure. He added that it is also not an inhibition against a complaint being lodged under the Cr.P.C. before the competent court for any such offence. The Single Directive was sought to be supported by the Attorney General on the ground that the CBI being a special agency created by the Central Government, it was required to function according to the mandate of the

Central Government which has constituted this special agency for specified purpose. The desirability of the Single Directive was supported by the learned Attorney General on the ground that the officers at the decision making level need this protection against malicious or vexatious investigations in respect of honest decisions taken by them. We were also informed that during hearing of this matter when this aspect was being debated, the Ministry of Finance has set up a High Power Board of experts in finance and a retired High Court Judge to examine the merits in every case for the purpose of grant of sanction to the CBI for recording the information and investigating into any such offence, and a time frame for the decision has also been specified. Similarly, in the case of government servants, the authority for grant of sanction with a provision for appeal in case the sanction is declined has been provided. It was submitted that such a structure to regulate the grant of sanction by a high authority together with a time frame to avoid any delay is sufficient to make the procedure reasonable and to provide for an objective decision being taken for the grant of sanction within the specified time. It was urged that refusal of sanction with reasons would enable judicial review of that decision in case of any grievance against refusal of the sanction. Reliance was placed by the learned Attorney General on the decisions of this Court in *K. Veeraswami vs. Union of India and Others,* 1991 (3) SCC 655 and *State of Bihar and Another etc. vs. J.A.C. Saldanha and Others,* 1980 (1) SCC 554 to support the argument of legality of the Single Directive. We shall advert to this aspect later.

23. The provision made for deciding the question of grant of sanction in the cases of officers to whom the Single Directive applies is, as under:-

> *OFFICE MEMORANDUM DATED FEBRUARY 17, 1997 OF THE RESERVE BANK OF INDIA, CENTRAL OFFICE, DEPARTMENT OF ADMINISTRATION & PERSONNEL MANAGEMENT*
>
> "*Advisory Board on bank frauds*
>
> It has been decided to set-up an 'Advisory Board on bank frauds' to advise the Bank on the cases referred by the Central Bureau of Investigation either directly or through the Ministry of Finance for investigation/registration of cases against bank officers of the rank of General Manager and above. The constitution of the Board will be as under:-

Shri S.S. Tarapore, Ex-Deputy Governor Reserve Bank of India	Chairman
Justice Shri B.V. Chavan Retd. Judge of Bombay High Court & Member, Reserve Bank of India Services Board.	Member
Shri B.N. Bhagwat, Retd. Secretary, Government of India.	Member
Shri Satish Sawhney, Retd. Director General of Police Maharashtra.	Member
Shri Y.H. Malegam, Chartered Accountant & Senior Partner in M/s. S.S. Billimoria & Co."	Member

24. Another action taken by the Government of India is, as under:-

> *Letter No. I 11011/33/95-IS DI(B) dated 1st/2nd August, 1995 of Ministry of Home Affairs, Government of India*
>
> "Government had through its Order No.S-7937/SS(ISP)/93 dated 9th July, 1993 constituted a Committee under the Chairmanship of Former Home Secretary (Shri N.N. Vohra) to take stock of all available information about the activities of the crime syndicates/mafia

organisations which had developed links with and were being protected by Government functionaries and political personalities. The Vohra Committee in its Report submitted to the Government recommended a Nodal Set-up directly under the Home Secretary to which all existing intelligence and enforcement agencies of the Government shall promptly pass on any information which they may come across, relating to links of crime syndicates with functionaries of the Government and political personalities.

2. Accordingly, Government have now decided to set up a Group under the Chairmanship of the Home Secretary to act as a Nodal Set-up to collect and collate the information and to decide on the action that is required to be taken to ensure that the nexus of criminals with businessmen, politicians or bureaucrats is broked.

3. The Group shall comprise:

i) Home Secretary,	Chairman
ii) Secretary (Revenue)	Member
iii) Director, IB	Member
iv) Director, CBI	Member
v) Secretary, R&AW	Member

4. It is felt that it would be necessary for this Group to interact with various State Governments in order to both make use of such information as may be available with the States as well as to utilise the expertise of the relevant agencies of the State Governments. For this purpose, the above Group would interact appropriately from time to time with Chief Secretaries and other senior functionaries of the State Governments.

5. All the Intelligence and enforcement agencies under the Government like the Intelligence Bureau, the CBI and various bodies functioning under the Department of Revenue shall forthwith report to the Home Secretary whenever substantive information/evidence of collusion of officials/politicians with criminal syndicates comes to their knowledge in the course of their working. The Group shall meet periodically to decide upon the action required to be taken and identify an agency or agencies to take up further investigations. The Nodal Group would also review the information in the above context already available with the various agencies and decide upon the follow up action that is required to be taken.

6. This issues with the approval of Home Minister."

Report of IRC

25. The IRC has in its report accepted the legality of the Single Directive placing reliance on the decision of this Court in *K. Veeraswami (supra)*. After considering the functions of the CBI and the Directorate of Enforcement, it has made certain recommendations which are as under :-

"MEASURES FOR SPEEDY INVESTIGATIONS AND TRIALS

4.1 The Committee recommends that the following measures should be taken to ensure speedy investigations and trials :

a) Special Courts should be got established at identified stations to deal exclusively with FERA offences so that cases can be decided speedily.

b) To ensure against delays in investigations abroad, the Revenue Secretary should be the competent authority to approve filing of applications for Letters Rogatory.

c) The Directorate of Enforcement should be delegated powers to appoint special counsels for conducting trials, who may also act as legal advisers for the Department in respect of the cases entrusted to them.

d) In many of the major cases of the Directorate, the suspects have been able to abuse the process of law by stalling the investigations at the initial stages through litigation at various levels, obtaining stay orders from High Courts and injunctions on flimsy grounds. In consultation with the Attorney General, the Revenue Department may examine the possibility of making a representation to the Apex Court to consider issuing appropriate directions so that the pace and progress of cases is not thwarted by interlocutory procedures or stay orders issued by the Courts below.

e) Taking into account the instances in which suspected persons have been able to stall investigations on alleged health grounds, the Revenue Department should approach the Ministry of Health to establish standing medical boards in identified cities to examine such persons. Such boards should comprise outstanding medical experts of unimpeachable integrity. The Courts can be requested to refer the prayer of the accused for staying proceedings on health grounds to such medical boards before passing judgment."

"CHECKS AND BALANCES

5.1 The Directorate must be provided adequate financial and administrative delegations to enable it to exercise autonomy in the conduct and pursuit of investigations without let or hindrance. Side by side, it is necessary to provide appropriate checks and balances to ensure against miscarriage of justice. In this context, the Committee recommends the following :

a) The Revenue Department should undertake regular review of the progress of cases before the Directorate. To enable this, the Directorate should regularly furnish information regarding the number of cases instituted, progress of investigations, cases settled in adjudication and those put to Courts. The Committee note that while such information is already being supplied in reply to Parliament Questions, information to be placed before the Parliamentary Committee/Standing Committee, etc., there is no established procedure for the Directorate to furnish relevant information in a well devised format.

b) The present system of the Directorate furnishing fortnightly reports providing statistical information and brief outline of the cases taken up for investigation should be further fine tuned. These reports should be carefully examined by the Revenue Department to ensure that the Directorate is performing its functions efficiently. The Revenue Secretary should hold regular review meetings with the Director Enforcement, also involving the Director Revenue Intelligence and other concerned officers.

c) Guidelines relating to interrogation, prosecution, adjudication, time frame for completion of investigation, etc., have been issued by the Directorate from time to time. These guidelines should be comprehensively reviewed and, based thereon, a circular should be released for the information of the public at large, to enable all concerned to know the systems and procedures followed by the Directorate. This shall contribute to greater transparency. This effort should be concluded within 2-3 months.

5.2 It is important that the Directorate lays down a clearly spelt out time frame for the completion of investigation, launching of prosecution and completion of adjudication proceedings and for the Director to ensure that the prescribed time limits are strictly adhered to. The Committee are of the view that the Directorate would be able to more efficiently discharge its functions if immediate steps are taken to upgrade the level and quality of its in house legal advice mechanism. At our request, the Cabinet Secretary convened a meeting with the Revenue Department, Enforcement Directorate and other concerned officers to consider various proposals for strengthening the Directorate. The Committee hope that the various decisions taken at the Cabinet Secretary's level shall witness implementation within 6-8 weeks.

5.3 The Committee recommends that the Directorate should take time bound steps to establish a grievances redressal mechanism to promptly deal with complaints received from the public against actions of the Enforcement Directorate. Insofar as complaints of arbitrary action by senior officers of the Directorate are concerned, the Committee recommends that these should be looked into by a Committee headed by the Central Vigilance Commissioner and comprising Revenue Secretary, Director General Revenue Intelligence, Enforcement Director and a senior representative of the Ministry of Law.

5.4 As regards the pursuit of cases which appear to have a politico-beaurocrat-criminal nexus, the Home Secretary agreed with the Committee's suggestion that the Nodal Agency in the Home Ministry (chaired by Home Secretary) shall also include Member (Investigation) of the Central Board of Direct Taxes, Director General Revenue Intelligence and the Director Enforcement as members.

5.5 The Committee recommends that the Annual Report of the Department of Revenue should have a section devoted exclusively to the functioning of the Enforcement Directorate. This report should highlight the number of cases taken up for investigation by ED, raids and searches conducted, amount of Indian and foreign currency seized, etc. The report should also indicate the number of persons arrested, prosecutions launched and convictions ordered by the Courts. The Committee feels that enhanced public knowledge about the work being done by the Directorate shall demystify its operations and contribute to improved public confidence."

"SUMMARY OF RECOMMENDATIONS

I. *CBI AND CVC*

1. CVC to be conferred statutory status; appointment of Central Vigilance Commissioner to be made under the hand and seal of the President (para 4.2)
2. Constitution of a Committee for selection of CVC (Para 4.3)
3. CVC to overview CBI's functioning (para 5)
4. CBI's reporting to Government to be streamlined without diluting its functional autonomy (para 3.3)
5. CVC to have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it (para 6)
6. Constitution of a Selection Committee for identifying a panel of names for selection of Director CBI; final selection to be made by ACC from such panel (para 8.2)
7. Central Government to pursue with the State Governments to set up credible mechanism for selection of

Police Chief (para 8.3)

8. Director CBI to have a minimum tenure of 2 years (para 8.4)
9. Transfer of incumbent Director CBI would need endorsement of the Selection Committee (para 8.5)
10. Director CBI to ensure full freedom for allocation of work within the Agency, including constitution of investigation teams (para 8.6)
11. Selection/extension of tenure of officers upto to the level of Joint Director (JD) to be decided by a Board under Central Vigilance Commissioner; JD and above would need the approval of ACC (para 8.7)
12. Change in the existing Tenure Rules not recommended (para 8.8)
13. Proposals for improvement of infrastructure, methods of investigation, etc., to be decided urgently (para 8.9.2)
14. No need for creation of a permanent core group in the CBI (para 8.9.3)
15. Severe disciplinary action against officers who deviate from prescribed investigation procedures (para 9.1)
16. Director CBI to be responsible for ensuring time limits for filing charge sheets in courts (para 9.2)
17. Document on CBI's functioning to be published within three months (para 9.4)
18. Essential to protect officers at the decision making levels from vexatious enquiries/prosecutions (para 10.6)
19. Secretaries to adhere strictly to prescribed time frames for grant of permission for registration of PE/RC. CBI to be free to proceed if decision not conveyed within the specified time (para 10.9)
20. Secretary of Administrative Ministry to convey a decision regarding registration of PE/RC within 2 months of receipt of request. If not satisfied with decision, Director CBI free to make fresh reference to the Committee headed by Cabinet Secretary within a period of four weeks and the latter to decide thereon within a period of four weeks (para 10.10)
21. Protection under the Single Directive not to cover offences like bribery, when prima-facie established in a successful trap (para 10.12)
22. Cases of disproportionate assets of Central Government and All India Services Officers to be brought within the ambit of the Single Directive (para 10.13)
23. Time limit of 3 months for sanction for prosecution. Where consultation is required with the Attorney General or the Solicitor General, additional time of one month could be allowed (paras 10.14 and 10.15)
24. Government to undertake a review of the various types of offences notified for investigation by the CBI to retain focus on anti-corruption activities which is its primary objective (para 11.1)
25. Cases falling within the jurisdiction of the State Police which do not have inter-state or inter-national ramifications should not be handed over to CBI by States/Courts (para 11.2)
26. Government to establish Special Courts for the trial of CBI cases (11.3)
27. Severe action against officials found guilty of high handedness;

prompt action against those officials chastised by the Courts (para 11.4)

28. Director CBI to conduct regular appraisal of personnel to weed out the corrupt and inefficient, and maintain strict discipline within the organisation (para 11.5)

II. *ENFORCEMENT DIRECTORATE*

1. Selection Committee headed by Central Vigilance Commissioner to recommend panel for appointment of Director Enforcement by the ACC (Para 2.2)
2. Director Enforcement to have minimum tenure of 2 years. For his premature transfer, the Selection Committee headed by Central Vigilance Commissioner to make suitable recommendations to the ACC (para 2.3)
3. Post of Director Enforcement to be upgraded to that of Additional Secretary/Special Secretary to the Government (para 2.4)
4. Officers of the Enforcement Directorate handling sensitive assignments to be provided adequate security for enabling fearless discharge of their functions (para 2.5)
5. Extension of tenures up to the level of Joint Directors in the Enforcement Directorate to be decided by a Committee headed by Central Vigilance Commissioner (para 2.6)
6. Proposals for foreign visits to conduct investigations to be cleared by the Revenue Secretary and the Financial Adviser (para 2.7)
7. While enjoying full internal autonomy Enforcement Directorate to be made accountable. Responsibility of Government to ensure efficient and impartial functioning (para 3.1)
8. Premature medial publicity to be ensured against (para 3.3.)
9. Adjudication proceedings/ prosecution to be finalised by the Enforcement Directorate within a period of one year (para 3.4)
10. Director Enforcement to monitor speedy completion of investigation and launching of adjudications/ prosecution. Revenue Secretary to review regularly (para 3.4)
11. The Director Enforcement to keep close*(sic)* against vexatious search; action against functionaries who act without due care (para 3.5)
12. Special Courts to be established to deal with FERA offences for speedy completion of trials [para 4.1 (a)]
13. For speedy conduct of investigations abroad, Revenue Secretary be authorised to approve filing of applications for Letters Rogatory [para 4.1(b)]
14. The Enforcement Directorate to be delegated powers to appoint Special Counsels for trials [para 4.1@]
15. The Revenue Department to consult Attorney General regarding measures against conclusion of cases being thwarted by stay orders, etc. [para 4.1(d)]
16. Revenue Department to approach Health Ministry to establish Standing Medical Boards in identified cities for examination of accused persons seeking deferment of proceedings on health grounds [para 4.1(c)]
17. Revenue Department to undertake regular reviews of cases pending with the Directorate [paras 5.1(a) and (b)].

18. Comprehensive circular to be published by the Directorate to inform public about procedures/ systems of its functioning [para 5.1@]
19. In-house legal advice mechanism to be strengthened (para 5.2)
20. Proposals for strengthening the Directorate to be implemented within 8 weeks (para 5.2)
21. Directorate to establish a grievance redressal mechanism (para 5.3)
22. Committee headed by Central Vigilance Commissioner to decide complaints of arbitrary action by Directorate officials (para 5.3)
23. Nodal Agency headed by Home Secretary on politico-beaurocrat-criminal nexus to include Member Investigation CBDT, Director General Revenue Intelligence and Director Enforcement as members (para 5.4)
24. Annual Report of the Department of Revenue to contain an exhaustive section on the working of the Enforcement Directorate (para 5.5)
25. Suitable incentives to be provided to functionaries of Enforcement Directorate at various levels, to attract best material, to be decided within two months (para 6.1)

III. NODAL AGENCY ON CRIMINAL NEXUS

1. Requirements of inter-agency co-ordination at field unit level to be evolved by Home Secretary (para 2.1)
2. NA's functioning to be watched for some time before considering need for structural changes (para 3)
3. Home Secretary will hold meetings of NA every month (para 3)"

26. The reference to paragraphs within brackets at the end of each recommendation is to the paragraphs of the report containing discussion pertaining to the Central Bureau of Investigation (CBI) and the Central Vigilance Commission (CVC) in Part I and Directorate of Enforcement in Part II of the report. These recommendations have, therefore, to be read along with the discussion in the corresponding paras in Part I and Part II of the report.

Need for Court's intervention

27. The IRC is a body constituted by the Central Government itself as a result of its perception that the constitution and functioning of the CBI, CVC and Directorate of Enforcement require a close scrutiny in the background of the recent unsatisfactory functioning of these agencies with a view to improve their functioning. The view taken by the IRC is a reaffirmation of this belief shared by everyone. The preface to the report indicates the reason for the constitution of the IRC and says that "In the past several years, there has been progressive increase in allegations of corruption involving public servants. Understandably, cases of this nature have attracted heightened media and public attention. A general impression appears to have gained ground that the concerned Central investigating agencies are subject to extraneous pressures and have been indulging in dilatory tactics in not bringing the guilty to book. The decisions of higher courts to directly monitor investigations in certain cases have added to the aforesaid belief." There can thus be no doubt that there is need for the exercise we were called upon to perform and which has occasioned consideration of this crucial issue by this Court in exercise of its powers conferred by the Constitution of India. The conclusions reached by the IRC and the recommendations it has made for improving the functioning and thereby the image of these agencies is a further reaffirmation of this general belief. There can also be no doubt that the conclusions reached by the IRC and its recommendations are the minimum which require immediate acceptance and implementation in a bid to arrest any further decay of the polity. It follows that the exercise to be performed now by this Court is really to consider whether any modifications/additions are required to be made to the recommendations of the IRC for achieving the object for which the Central Government itself constituted the IRC. We are informed by the learned Attorney General that further action on the report of the IRC could not be taken so far because of certain practical difficulties faced by the Central Government but there is no negative reaction to the report given by the Central Government.

28. The only caveat entered by the Attorney General is on the basis of a note by an individual Minister in the Central Cabinet in which emphasis has been laid that the ultimate responsibility for the functioning of these agencies to the Parliament is that of the concerned Minister and this aspect may be kept in mind. It has been specifically mentioned that the Minister would remain the final disciplinary authority and would have the power to refer complaints against the agency or its officers to an appropriate authority for necessary action. There can be no quarrel with the Minister's ultimate responsibility to the Parliament for the functioning of these agencies and he being the final disciplinary authority in respect of the officers of the agency with power to refer complaints against them to the appropriate authority. Some other specific powers of the Minister were indicated as under:-

1. The Minister has the power to review the working of the agencies which are under this Department.
2. The Minister has the power to give broad policy directions regarding investigation and prosecution of classes or categories of cases.
3. The Minister has the power to appraise the quality of the work of the Head of the agency as well as other senior officers of the agency.
4. The Minister has the power to call for information regarding progress of cases.

29. It is sufficient to say that the Minister's general power to review the working of the agency and to give broad policy directions regarding the functioning of the agencies and to appraise the quality of the work of the Head of the agency and other officers as the executive head is in no way to be diluted. Similarly, the Minister's power to call for information generally regarding the cases being handled by the agencies is not to be taken away. However, all the powers of the Minister are subject to the condition that none of them would extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect the concerned officers are to be governed entirely by the mandate of law and the statutory duty cast upon them.

30. It is useful to remember in this context what this Court has on several occasions in the past said about the nature of duty and functions of Police officers in the investigation of an offence. It is sufficient to refer to one of them, namely. *Union of India and Others vs. Sushil Kumar Modi and Others,* 1997 (4) SCC 770, (Bihar Fodder Scam case), wherein it was said, as under:-

> "4. At the outset, we would indicate that the nature of proceedings before the High Court is somewhat similar to those pending in this Court in *Vineet Narain v. Union of India,* 1996 (2) SCC 199 and *Anukul Chandra Pradhan v. Union of India,* 1996 (6) SCC 354 and, therefore, the High Court is required to proceed with the matter in a similar manner. It has to be borne in mind that the purpose of these proceedings is essentially to

ensure performance of the statutory duty by the CBI and the other government agencies in accordance with law for the proper implementation of the rule of law. To achieve this object a fair, honest and expeditious investigation into every reasonable accusation against each and every person reasonably suspected of involvement in the alleged offences has to be made strictly in accordance with law. The duty of the Court in such proceedings is, therefore, to ensure that the CBI and other government agencies do their duty and do so strictly in conformity with law. In these proceedings, the Court is not required to go into the merits of the accusation or even to express any opinion thereon, which is a matter for consideration by the competent court in which the charge-sheet is filed and the accused have to face trial. It is, therefore, necessary that not even an observation relating to the merits of the accusation is made by the Court in these proceedings lest it prejudice the accused at the trial. The nature of these proceedings may be described as that of "continuing mandamus" to require performance of its duty by the CBI and the other government agencies concerned. The agencies concerned must bear in mind and, if needed, be reminded of the caution administered by Lord Denning in this behalf in *R.v. Metropolitan Police Commr.*, 1968 (1) All ER 763/1968 (2) QB 118. Indicating the duty of the Commissioner of Police, Lord Denning stated thus: (All ER p. 769)

> "I have no hesitation, however, in holding that, like every constable in the land, *he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, ... I hold it to be the duty* of the Commissioner of Police, as it is of every chief constable, *to enforce the law of the land.* He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; *but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."*

The nature of such a proceeding in a court of law was also indicted by Lord Denning, as under:

> "A question may be raised as to the machinery by which he could be compelled to do his duty. *On principle, it seems to me that once a duty exists, there should be a means of enforcing it. This duty can be enforced.* I think, either by action at the suit of the Attorney General; or *by the prerogative order of mandamus.* (emphasis supplied)

There can hardly be any doubt that the obligation of the police in our constitutional scheme is no less.

5. According to the Code of Criminal Procedure, 1973 the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the police and by no other authority, see

> *Abhinandan Jha v. Dinesh Mishra,* 1967 (3) SCR 668. This must be borne in mind as also that the scope and purpose of a proceeding like the present is to ensure a proper and faithful performance of its duty by the police officer by resort to the prerogative writ of mandamus."

31. The Minister's power in these matters has, therefore, to be understood as circumscribed by these limitations under the law.

History of CBI

32. It is useful to refer at this stage to the history of the CBI. The Special Police Establishment was formed during the World War II when large sums of public money were being spent in connection with the War and there arose enormous potential for corruption amongst the officers dealing with the supplies. An executive order was made by the Government of India in 1941 setting up the Special Police Establishment (SPE) under a DIG in the then Department of War. The need for a central government agency to investigate cases of bribery and corruption by the Central Government servants continued and, therefore, the Delhi Special Police Establishment Act was brought into force in 1946. Under this Act, the superintendence of the Special Police Establishment was transferred to the Home Department and its functions were enlarged to cover all departments of the Government of India. The jurisdiction of the SPE extended to all the Union Territories and could also be extended to the States with the consent of the concerned State Governments. Then the SPE was put under the charge of Director, Intelligence Bureau. Later in 1948 a post of Inspector General of Police, SPE was created and the organisation was placed under his charge. The Central Bureau of Investigation was established on 1.4.1963 vide Government of India's Resolution No. 4/31/61-T/MHA. This was done to meet the felt need of having a central police agency at the disposal of the Central Government to investigate into cases not only for bribery and corruption but also those relating to the branch of central fiscal laws, frauds in government departments and PSUs and other serious crimes. On enlargement of the role of CBI an Economic Offences Wing was added to the existing Divisions of the CBI. In 1987 two Divisions were created in the CBI known as Anti-Corruption Division and Special Crimes Division, the latter dealing with cases of conventional crimes besides economic offences. In 1994 due to increased workload relating to bank frauds and economic offences a separate Economic Offences Wing was established in CBI with the result that since then the CBI has three Investigation Divisions, namely, Anti-Corruption Division, Special Crimes Division and Economic Offences Division. Further particulars thereof are not necessary in the present context.

33. We are informed that almost all the State Governments have given concurrence for extension of the jurisdiction of the Delhi Special Police Establishment in their States with the exception of only a few. The result is that for all practical purposes, the jurisdiction in respect of all such offences is exercised in the consenting States only by the CBI and not by the State Police. This is the significance of the role of the CBI in such matters and, therefore, technically the additional jurisdiction under the general law of the State Police in these matters is of no practical relevance. The pragmatic effect of the Single Directive is, therefore, to inhibit investigation against the specified category of officers without sanction in accordance with the Single Directive.

Validity of Directive No. 4.7(3) of the Single Directive

34. We may now refer to the two decisions on which specific reliance has been placed by the learned Attorney General before us as well as the IRC in its report.

35. The decision in *J.A.C. Saldanha (supra)* is on Section 3 of the Police Act, 1861 and deals with the ambit and scope of State Government's power of 'superintendence' thereunder. It was held in *J.A.C. Saldanha (supra)* that the power of superintendence of the State Government includes its power to direct further investigation under Section 173(8) Cr.P.C.. That was a case in which there was occasion to require further investigation because of the unsatisfactory nature of the investigation done earlier of a cognizable offence. Thus, in that case the power of superintendence was exercised for directing further investigation to complete an unsatisfactory investigation of a cognizable offence to promote the cause of justice and not to subvert it by preventing investigation. In our opinion, in the present context, that decision has no application to support the issuance of the Single Directive in exercise of the power of superintendence, since the effect of the Single Directive might thwart investigation of a cognizable offence and not to promote the cause of justice by directing further investigation leading to a prosecution.

36. The other decision of this Court is in *K. Veeraswami (supra)*. That was a decision in which the majority held that the Prevention of Corruption Act applies even to the Judges of the High Court and the Supreme Court. After taking that view, it was said by the majority (per Shetty, J.) that in order to protect the independence of judiciary, it was essential that no criminal case shall be registered under Section 154 Cr.P.C. against a Judge of the High Court or of the Supreme Court unless the Chief Justice of India is consulted and he assents to such an action being taken. The learned Attorney General contended that this decision is an authority for the proposition that in case of high officials, the requirement of prior permission/sanction from a higher officer or Head of the Department is permissible and necessary to save the concerned officer from harassment caused by a malicious or vexatious prosecution. We are unable to accept this submission.

37. The position of Judges of High Courts and Supreme Court, who are constitutional functionaries, is distinct, and the independence of judiciary, keeping it free from any extraneous influence, including that from executive, is the rationale of the decision in *K. Veeraswami (supra)*. In strict terms the Prevention of Corruption Act, 1946 could not be applied to the superior Judges and, therefore, while bringing those Judges within the purview of the Act yet maintaining the independence of judiciary, this guideline was issued as a direction by the Court. The feature of independent of judiciary has no application to the officers covered by the Single Directive. The need for independence of judiciary from the executive influence does not arise in the case of officers belonging to the executive. We have no doubt that the decision in *K. Veeraswami (supra)* has no application to the wide proposition advanced by the learned Attorney General to support the Single Directive. For the same reason, reliance on that decision by the IRC to uphold the Single Directive is misplaced.

38. The question, however, is whether, without the aid of these decisions, the Single Directive can be upheld. In this context, meaning of the word "superintendence" in Section 4(1) of the Delhi Special Police Establishment Act, 1946 requires consideration.

39. The Delhi Special Police Establishment Act, 1946 is an Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in the Union Territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. Section 6 of the Act requires consent of the State Government to exercise powers and jurisdiction under the Act by the Delhi Special Police Establishment. This is because 'Police' is a State subject, being in List II, Entry 2 of the Seventh Schedule. For this reason, the learned Attorney General contended that the power and jurisdiction of the State Police in respect of an offence within its jurisdiction remains intact and is not inhibited by the Single Directive; and that the CBI alone is inhibited thereby. Section 2 of the Act deals with constitution and powers of the Special Police Establishment (SPE). This is how the CBI has been constituted. Section 3 provides for offences to be investigated by the SPE and says that the offences or class of offences to be investigated by the agency may be specified by notification in the Official Gazette by the Central Government.

40. Section 3 of the Police Act, 1861 is in pari materia with Section 4 of the Delhi Special Police Establishment Act, 1946. These Sections read as under:-

> *Section 3 of the Police Act, 1861:*
>
> "3. ***Superintendence in the State Government***.- The superintendence of the police throughout a general police-district shall vest in and shall be exercised by the State Government to which such district is subordinate, and except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary.
>
> *Sections 3 and 4 of the Delhi Special Police Establishment Act, 1946:*
>
> ***"Offences to be investigated by S.P.E.***
>
> 3. The Central government may, by notification in the Official Gazette specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.
>
> ***Superintendence & Administration of S.P.E.***
>
> 4(1) The Superintendence of the Delhi Special Police Establishment shall vest in the Central Government.
>
> (2) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State, as the Central Government may specify in this behalf."

41. The meaning of the word "superintendence" in Section 4(1) of the Delhi Special Police Act, 1946 determines the scope of the authority of the Central Government in this context.

42. There can be no doubt that the overall administration of the said force, i.e., CBI vests in the Central Government, which also includes,by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it. The general superintendence over the functioning of the Department and specification of the offences which are to be investigated by the agency is not the same as and would not include within it the control of the initiation and the actual process of investigation, i.e., direction. Once the CBI is empowered to investigate an offence generally by its specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of "superintendence" in Section 4(1).

43. It is, therefore, the notification made by the Central Government under Section 3 which confers and determines the jurisdiction of the CBI to investigate an offence; and once that jurisdiction is attracted by virtue of the notification under Section 3, the actual investigation is to be governed by the statutory provisions under the general law applicable to such investigations. This appears to us the proper construction of Section 4(1) in the context, and it is in harmony with the scheme of the Act, and Section 3 in particular. The word "superintendence" in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions. The broad proposition urged on behalf of the Union of India that it can issue any directive to the CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive under Section 4(1) of the Act cannot be accepted. The jurisdiction of the CBI to investigate an offence is to be determined with reference to the notification issued under Section 3 and not by any separate order not having that character.

44. This view does not conflict with the decision in *J.A.C. Saldanha (supra)* as earlier indicated. In *Saldanha,* the question was whether an unsatisfactory investigation already made could be undertaken by another officer for further investigation of the offence so that the offence was properly investigated as required by law, and it was not to prevent the investigation of an offence. The Single Directive has the effect of restraining recording of FIR and initiation of investigation and not of proceeding with investigation, as in *Saldanha.* No authority to permit control of statutory powers exercised by the police to investigate an offence within its jurisdiction has been cited before us except *K. Veeraswami* which we have already distinguished. The view we take accords not only with reason but also with the very purpose of the law and is in consonance with the basic tenet of the rule of law.

45. Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued under Section 4(1) thereof. This result follows from the fact that conferment of jurisdiction is under Section 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that statutory jurisdiction cannot be subject to executive control.

46. There is no similarity between a mere executive order requiring prior permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for prosecution being provided in the very statute which enacts the offence, the sanction for prosecution is a pre-requisite for the court to take congnisance of the offence. In the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification under Section 3 of the Act. The word "superintendence" in Section 4(1) of the Act in the context must be construed in a manner consistent with the other provisions of the Act and the general statutory powers of investigation which govern investigation even by the CBI. The necessity of previous sanction for prosecution is provided in Section 6 of the Prevention of Corruption Act, 1947 (Section 19 of the 1988 Act) without which no court can take cognisance of an offence punishable under Section 5 of that Act. There is no such previous sanction for investigation provided for either in the Prevention of Corruption Act or the Delhi Special Police Establishment Act or in any other statutory provision. The above is the only manner in which Section 4(1) of the Act can be harmonised with Section 3 and the other statutory provisions.

47. The Single Directive has to be examined in this background. The law does not classify offenders differently for treatment thereunder including investigation of offences and prosecution for offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The Single Directive is applicable only to certain persons above the specified level who are described as "decision making officers". The question is whether any distinction can be made for them for the purpose of investigation of an offence of which they are accused.

48. Obviously, where the accusation of corruption is based on direct evidence and it does not require any inference to be drawn dependent on the decision making process, there is no rational basis to classify them differently. In other words, if the accusation be of bribery which is supported by direct evidence of acceptance of illegal gratification by them, including trap cases, it is obvious that no other factor is relevant and the level or status of the offender is irrelevant. It is for this reason that it was conceded that such cases, i.e., of bribery, including trap cases, are outside the scope of the Single Directive. After some debate at the Bar, no serious attempt was made by the learned Attorney General to support inclusion within the Single Directive of cases in which the offender is alleged to be in possession of disproportionate assets. It is clear that the accusation of possession of disproportionate assets by a person is also based on direct evidence and no factor pertaining to the expertise of decision making is involved therein. We have, therefore, no doubt that the Single Directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question now is only with regard to cases other than those of bribery, including trap cases, and of possession of disproportionate assets being covered by the Single Directive.

49. There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly any illegal gain to the decision maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the hierarchy. This is, therefore, an area where the opinion of persons with requisite expertise in decision making of that kind is relevant and, may be even decisive in reaching the conclusion whether the allegation requires any investigation to be made. In view of the fact that the CBI or the Police force does not have the expertise within its fold for the formation of the requisite opinion in such cases, the need for the inclusion of such a mechanism comprising of experts in the field as a part of the infrastructure of the CBI is obvious, to decide whether the accusation made discloses grounds for a reasonable suspicion of the commission of an offence and it requires investigation. In the absence of any such mechanism within the infrastructure of the CBI, comprising of experts in the field who can evaluate the material for the decision to be made, introduction therein of a body of experts having expertise of the kind of business which requires the decision to be made, can be appreciated. But then, the final opinion is to be of the CBI with the aid of that advice and not that of anyone else. It would be more appropriate to have such a body within the infrastructure of the CBI itself.

50. The Single Directive cannot, therefore, be upheld as valid on the ground of it being permissible in exercise of the power of superintendence of the Central Government under Section 4(1) of the Act. The matter has now to be considered de hors the Single Directive.

Power of the Supreme Court

51. In view of the common perception shared by everyone including the Government of India and the Independent Review Committee (IRC) of the need for insulation of the CBI from extraneous influence of any kind, it is imperative that some action is urgently taken to prevent the continuance of this situation with a view to ensure proper implementation of the rule of law. This is the need of equality guaranteed in the Constitution. The right to equality in a situation like this is that of the Indian polity and not merely of a few individuals. The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality.

52. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. It is in the discharge of this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an indepth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this Court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf.

53. There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition. The recent experience in the field of prosecution is also discouraging. To emphasise this point, some reference has to be made to a large number of prosecutions launched as a result of monitoring by the court in this matter which have resulted in discharge of the accused at the threshold. It took several years for the CBI to commence investigation and that too as a result of the monitoring by this Court. It is not as if the CBI, on conclusion of the investigation, formed the opinion that no case was made out for prosecution so that the earlier inaction may have been justified. The CBI did file numerous chargesheets which indicated that in its view a prima facie case for prosecution had been made out. This alone is sufficient to indicate that the earlier inaction was unjustified. However, discharge of the accused on filing of the chargesheet indicates, irrespective of the ultimate outcome of the matters pending in the higher courts, that the trial court at least was not satisfied that a prima facie case was made out by the investigation. These facts are sufficient to indicate that either the investigation or the prosecution or both were lacking. A similar result of discharge of the accused in such a large number of cases where chargesheets had been filed by the CBI is not consistent with any other inference. The need for a strong and competent prosecution machinery and not merely a fair and competent investigation by the CBI can hardly be overemphasised. This is the occasion for us to take the view that a suitable machinery for prosecution of the cases filed in court by the CBI is also essential to ensure discharge of its full responsibility by the CBI. Unless a competent prosecution follows a fair and competent investigation, the exercise in the ultimate analysis would be futile. Investigation and prosecution are inter related and improvement of investigation without improving the prosecution machinery is of no practical significance. We would, therefore, consider the aspect of prosecution also in the formulation of the guidelines.

54. In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In *Erach Sarre Kanga etc. vs Union of India & Anr.* (Writ Petition No. 2632 of 1978 etc. etc) decided on 20th March, 1979, the Constitution Bench laid down certain guidelines relating to the Emigration Act. In *Lakshmi Kant Pandey vs. Union of India (in re: Foreign Adoption),* 1984 (2) SCC 244, guidelines for adoption of minor children by foreigners were laid down. Similarly in *State of West Bengal & Ors. etc. vs Sampat Lal & Ors. etc.*, 1985 (2) SCR 256, *K. Veeraswami vs Union of India and Others,* 1991 (3) SCC 655, *Union Carbide Corporation and Others vs. Union of India and Others,* 1991 (4) SCC 584, *Delhi Judicial Service Association etc. vs. State of Gujarat and Others etc. (Nadiad Case),* 1991 (4) SCC 406, *Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. And Another,* 1996 (4) SCC 622 and *Dinesh Trivedi, M.P. and Others vs. Union of India and Others,* 1997 (4) SCC 306, guidelines were laid down having the effect of law, requiring rigid compliance. In *Supreme Court Advocates-on-Record Association and Others vs. Union of India (IInd Judges Case),* 1993 (4) SCC 441, a 9-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in *Vishakha and Others vs. State of Rajasthan and Others,* 1997 (6) SCC 241, elaborate guidelines have been laid down for observance in work places relating to sexual harassment of working women. In *Vishakha,* it was said :

> "The obligation of this court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995(*) *[As amended at Manila, 28th August, 1997*] as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are :
>
> "Objectives of the Judiciary :

10. The objectives and functions of the Judiciary include the following :

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State."

Thus, an exercise of this kind by the court is now a well settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field.

55. As pointed out in *Vishakha (supra)*, it is the duty of the executive to fill the vacuum by executive orders because its filed is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.

56. On this basis, we now proceed to give the directions enumerated hereafter for rigid compliance till such time as the legislature steps in to substitute them by proper legislation. These directions made under Article 32 read with Article 142 to implement the rule of law wherein the concept of equality enshrined in Article 14 is embedded, have the force of law under Article 141 and, by virtue of Article 144, it is the duty of all authorities, civil and judicial, in the territory of India to act in aid of this Court. In the issuance of these directions, we have accepted and are reiterating as far as possible the recommendations made by the IRC.

57. It is a similar perception in England which has led to the constitution of a Committee headed by Lord Nolan on 'Standards in Public Life'. In Volume 1 of Lord Nolan's Report (1995), the general recommendations made are :

"General recommendations

4. Some of our conclusions have general application across the entire service :

Principles of public life

5. The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out in full on page 14.

Codes of Conduct

6. All public bodies should draw up Codes of Conduct incorporating these principles.

Independent Scrutiny

7. Internal systems for maintaining standards should be supported by independent scrutiny.

Education

8. More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training."

58. The Seven Principles of Public Life are stated in the Report by Lord Nolan, thus :

"The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties. Heading *Objectivity*

> In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
>
> *Accountability*
>
> Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
>
> *Openness*
>
> Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands
>
> *Honesty*
>
> Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
>
> *Leadership*
>
> Holders of public office should promote and support these principles by leadership and example."

59. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

60. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries : *R.v. Secretary of State for Foreign and Commonwealth Affairs,* (1995) 1 WLR 386.

61. Of course, the necessity of desirable procedures evolved by court rules to ensure that such a litigation is properly conducted and confined only to matters of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights guaranteed in the Constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has ultimately the deleterious effect of eroding the Indian polity.

62. As a result of the aforesaid discussion, we hereby direct as under:-

I. CENTRAL BUREAU OF INVESTIGATION (CBI) AND CENTRAL VIGILANCE COMMISSION (CVC)

1. The Central Vigilance Commission

(CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overviewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which chargesheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.

5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.

6. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/extension of tenure of officers upto the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers upto the level of Joint Director shall be with final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.

11. Proposals for improvement of

infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the revenue, banking and security sectors should be indicted into the CBI.

12. The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the concerned officials.

13. The Director, CBI shall be responsible for ensuring the filing of chargesheets in courts within the stipulated time limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

15. Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.

II. ENFORCEMENT DIRECTORATE

1. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.

2. The Director, Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance Commissioner.

3. In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.

4. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.

5. Extensions of tenure upto the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.

6. There shall be no premature media publicity by the CBI/Enforcement Directorate.

7. Adjudication/commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.

8. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.

9. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.

10. A comprehensive circular shall be published by the Directorate to inform the public about the procedures/systems of its functioning for the sake of transparency.

11. In-house legal advice mechanism

shall be strengthened by appointment of competent legal advisers in the CBI/ Directorate of Enforcement.

12. The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.

III. NODAL AGENCY

1. A Nodal Agency headed by the Home Secretary with Member (Investigation), Central Board of Director Taxes, Director General, Revenue Intelligence, Director, Enforcement and Director, CBI as members, shall be constituted for coordinated action in cases having politico-bureaucrat-criminal nexus.

2. The Nodal Agency shall meet at least once every month.

3. Working and efficacy of the Nodal Agency should be watched for about one year so as to improve it upon the basis of the experience gained within this period.

IV. PROSECUTION AGENCY

1. A panel of competent lawyers of experience and impeccable reputation shall be prepared with the advice of the Attorney General. Their services shall be utilised as Prosecuting Counsel in cases of significance. Even during the course of investigation of an offence, the advice of a lawyer chosen from the panel should be taken by the CBI/ Enforcement Directorate.

2. Every prosecution which results in the discharge or acquittal of the accused must be reviewed by a lawyer on the panel and, on the basis of the opinion given, responsibility should be fixed for dereliction of duty, if any, of the concerned officer. In such cases, strict action should be taken against the officer found guilty of dereliction of duty.

3. The preparation of the panel of lawyers with the approval of the Attorney General shall be completed within three months.

4. Steps shall be taken immediately for the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the Director of Prosecutions in U.K. On the constitution of such a body, the task of supervising prosecutions launched by the CBI/Enforcement Directorate shall be entrusted to it.

5. Till the constitution of the aforesaid body, Special Counsel shall be appointed for the conduct of important trials on the recommendation of the Attorney General or any other law officer designated by him.

63. The learned amicus curiae had urged us to issue directions for the appointment of an authority akin to the Special or Independent Counsel in the United States of America for the investigation of charges in politically sensitive matters and for the prosecution of those cases and to ensure that appointments to sensitive posts in the CBI and other enforcement agencies and transfers therefrom were not made by the political executive. We are of the view that the time for these drastic steps has not come. It is our hope that it never will, for we entertain the belief that the investigative agencies shall function far better now, having regard to all that has happened since these writ petitions were admitted and to the directions which are contained in this judgment. The personnel of the enforcement agencies should not now lack the courage and independence to go about their task as they should, even where those to be investigated are prominent and powerful persons.

64. In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the State Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances.

65. In the result, we strike down Directive No. 4.7(3) of the Single Directive quoted above and issue the above directions, which have to be construed in the light of the earlier discussion. The Report of the Independent Review Committee (IRC) and its recommendations which are similar to this extent can be read, if necessary, for a proper appreciation of these directions. To the extent we agree with the conclusions and recommendations of the IRC, and that is a large area, we have adopted the same in the formulation of the above directions. These directions require the strict compliance/ adherence of the Union of India and all concerned.

66. The writ petitions are disposed of in the above terms.

Criminal Misc. Petition Nos. 5879-5882 of 1997

67. In view of the disposal of the writ petitions in the manner indicated above and in the facts and circumstances of the case, we do not consider it necessary now to examine the appointment of Shri R.C. Sharma as Director, CBI. Moreover, the tenure of Shri Sharma as Director, CBI is to end soon. We make it clear that Shri Sharma is not to be continued as CBI Director beyond the date of expiry of his present tenure. Accordingly, these Crl. M.Ps. are disposed of in this manner.

68. In view of the withdrawal of C.W.P. No. 2992 of 1997 in the Delhi High Court as required by this Court's order dated 11.9.1997, no further order for the disposal of C.W.P. No. 2992 of 1997 is necessary.

SCALE (PIL) 1981-97 1442

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: J.S. VERMA CJI, B.N. KIRPAL AND V.N. KHARE, JJ.

PUBLIC INTEREST LITIGATION — MOTOR VEHICLES ACT — CONSTITUTION — ARTICLE 32 rw 142 — Vehicular traffic in Delhi — Earlier orders reported in 1997 (7) SCALE 97 & 581 — Court issues further directions and certain modifications

Order dated December 16, 1997 in W.P. (C) No. 13029 of 1985 [with W.P. (C) No. 9300/82, W.P. (C) No. 939/96 and W.P. (C) No. 95/97). [1997(7) SCALE 711]

of its earlier order.

Referred: Communist Party of India (M) vs Bharat Kumar and Others, 1997(7) SCALE 21.

1. After hearing the learned amicus curiae, the Additional Solicitor General and the counsel representing certain other interests, we issue the following further directions, namely:

(1) The figures in relation to issuance of commercial licences show that there is need to verify commercial licences, which were issued during the period 1993-95. We, therefore, direct that all commercial licences issued during the period 1993-95 be re-verified by the Transport Department to weed out all such licences which have been issued without following the Rules.

(2) We are informed that a test has now been prescribed for issuance of new licences. We direct the Transport Department to prescribe a suitable refresher training course as a condition for the renewal of any licence to drive a heavy vehicle.

(3) The grantee of a permit cannot (without express prior permission), under the provisions of the Motor Vehicles Act, either transfer his permit or to allow some other person to operate a vehicle on this permit. Any such use of permits - which really constitutes a trading in permits - is a patent violation of the Motor Vehicles Act and the Rules and would render the permit liable to cancellation, apart from other legal consequences. We direct the authorities not to renew any permit which has been or is being used by any person other than the original grantee, without the express prior permission of the grantee.

(4) We direct the Civic Authorities to take necessary steps to remove immediately all encroachments - temporary or permanent - on roads and pavements, which affect the smooth flow of traffic or obstruct the way of pedestrians. Stray cattle and other similar obstructions would also have to be similarly dealt with.

(5) The need for safety of school children travelling in buses requires that such buses be fitted with doors that can be shut. We, therefore, direct that on or after 31st January, 1998, no bus shall be used by an educational institution unless it is fitted with doors which can be closed. No educational institutions shall, after the said date, use a bus if it has an open door.

(6) Similarly, it is essential that, in addition to a driver, there is another qualified person in the bus who can attend to the children travelling in the bus. Rule 17 of the Motor Vehicles Rules, 1993 stipulates qualifications, duties and functions of a Conductor. It would be in the interest of safety to require the presence of a qualified conductor on board every bus that is being used by an educational institution. We are told that at present there is a paucity of trained conductors. We, therefore, direct that on or after 30th April, 1998, no bus used by or in the service of an educational institution shall be permitted to operate without a qualified conductor being present at all times.

(7) We are also informed that some schools have voluntarily requested the parents of their wards to accompany the buses so as to ensure that the drivers drive safely and the lives of the children are not put in jeopardy. We commend this action, and direct the Education Department to ask all schools including Government and Municipal schools to evolve a similar arrangement as far as possible, so as to ensure that in each bus there is at least one parent present who would be able to oversee the conduct of the driver. This step would go a long way in ensuring that the directions given as well as other safety measures prescribed are complied with in letter and spirit and that the driver drives

carefully.

(8) One of the problems, which has been brought to out notice, is the overcrowding of buses. After hearing the views of the Transport Department as well as the Delhi Police (Traffic Wing), we feel it appropriate to direct that no bus belonging to or in use of any educational institution, shall seat children in excess of 1.5 times its registered seating capacity. Similarly, other modes of public transport, such as TSRs, taxis and other vehicles used for transporting the students of an educational institution should not be permitted to carry children more than 1.5 times their registered seating capacity.

(9) One of the major pollutants identified in the various affidavits as well as in the latest Status Report filed by the Government is the TSR (two seater rickshaw using a two stroke engine). We are further informed that although the existing figure of registered TSRs, as per the records, is approximately 83,000: the actual number in use is far lesser since some of these permits have not been cancelled although the vehicles have been scranned. It would be in the interest of the environment, to freeze the number of TSRs for the present at the level at which they are actually in use in the city. We, therefore, direct that there would be no grant of fresh permits in respect of the TSR, save and except by way of replacement of an existing working TSR with a new one.

(10) We direct the Police Commissioner to frame appropriate guidelines for regulating processions - religious, political or otherwise - which tend to obstruct the flow of traffic. These guidelines should be in conformity with the rights of the users of the roads and the exercise of fundamental freedom of other citizens indicated by this Court in its judgment in *Communist Party of India (M) vs. Bharat Kumar and Others,* JT 1997 (9) SC 101.

(11) The Union of India is directed to file within two weeks the Action Plan for appointment of private persons to enforce traffic safety laws and confer upon such people suitable powers under the Cr.P.C. as well as under the Motor Vehicles Act. The Union of India would also file its response to the repeated suggestion made by the Traffic Police as well as the Transport Department for augmenting the uniformed force in the city.

(12) There are certain modifications called for in our earlier order dated 20th November, 1997, which we direct as hereunder:

(i) In para A(a), add the following :

"Requirement for installation of speed control devices would also not apply to vehicles operating on All India Tourist Permits issued by the Transport Department, NCT of Delhi".

(ii) In para A(f), the sentence commencing "no bus" and ending with "educational institution" shall stand substituted with the following :

"No bus belonging to or hired by an educational institution shall be driven by a driver who has -

(a) less than five years of experience of driving heavy vehicles:

(b) been challaned more than twice in a year in respect of offences of jumping red lights, improper or obstructive parking, violating the stop line, violating the rule requiring driving within the bus lane, violating restricting the overtaking, allowing unauthorised person to drive:

(c) been challaned/charged even once for the offence of over speeding, drunken driving and driving dangerously or for the offences under Sections 279, 337, 338 and 304-A of the Indian Penal Code.

> All such drivers would be dressed in a distinctive uniform and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution".

(iii) In para A(c), after the word "buses" add the words "heavy goods vehicles, medium goods vehicles, and 4-wheel light goods vehicles plying during the permitted hours."

(iv) In para A(h), add the following :

> "Needless to add, this is in addition to the statutory power conferred under Section 115 of the Motor Vehicles Act under which the authorities can prohibit or restrict any class of vehicle(s) from being used, inter alia, on any particular route or during any period of time."

(14) The Transport as well as the Police Departments are directed to ensure that the contents of this order are duly publicised so that the people using roads are made aware of the restrictions imposed. They should also give publicity to the basic rules relating to safe driving, particularly those relating to user of bus lanes, changing of lane, overtaking and right of way on round abouts. We direct the Union of India to make available the necessary facilities in this regard, particularly in relation to the electronic media.

SCALE (PIL) 1981-97 1445

KALPANA BEHERA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CUSTODIAL DEATH — Update of order reported in 1996(3) SCALE SP-26) — Court directs that parties be given inspection of the Report of the District Judge.

1. Report of the District Judge has been received. Learned counsel for the parties be given inspection of the same.

2. List after four weeks.

Order dated September 2, 1996 in W.P. (Crl.) 176/95. [1997(7) SCALE (SP) 27]

SCALE (PIL) 1981-97 1445

KALPANA BEHERA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CUSTODIAL DEATH — Court appoints amicus curiae in the matter and issues consequential directions.

Order dated October 7, 1996 in W.P. (Crl.) No. 176/95. [1997(7) SCALE (SP) 25]

1. Shri Mukul Mudgal is requested to appear as amicus curiae in this matter.

2. A copy of the report of the C.B.I. be given to counsel for the State of Orissa and Shri Mukul Mudgal. In addition, a copy of the paperbook be also given to Shri Mukul Mudgal.

3. Only inspection of the report of the learned District Judge be given to the learned counsel.

4. This be done within two weeks. Response on behalf of the respondents be filed within four week thereafter. The matter be listed thereafter.

SCALE (PIL) 1981-97 1446

KALPANA BEHERA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CUSTODIAL DEATH — Court directs that a copy of the Report of the learned District Judge be given to counsel for the parties including the learned amicus curiae.

1. A copy of the Report of the learned District Judge be given to counsel for the parties including the learned amicus curiae.

2. Response be filed within four weeks.

3. List after six weeks.

Order dated November 26, 1996 in W.P. (Crl.) No. 176/95. [1997(7) SCALE (SP) 26]

SCALE (PIL) 1981-97 1446

KALPANA BEHERA *Respondents*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA AND S.P. KURDUKAR, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CUSTODIAL DEATH — Court directs that a response to the learned District Judge's report be filed by the C.B.I.

1. Response to the learned District Judge's report be filed by the C.B.I. and also the concerned Investigating Officer within four weeks. List thereafter.

Order dated January 13, 1997 in W.P. (Crl.) No. 176/95. [1997(7) SCALE (SP) 26]

SCALE (PIL) 1981-97 1446

KALPANA BEHERA *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA AND S.P. KURDUKAR, JJ.

Order dated February 17, 1997 in W.P. (Crl.) No. 176/95.[1997(7) SCALE (SP) 26]

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CUSTODIAL DEATH — Court grants liberty to file further affidavits.

1. List the matter on 11.4.97.

2. Liberty to file any further affidavit within two weeks.

SCALE (PIL) 1981-97 1447
KALPANA BEHERA *Petitioners*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: J.S. VERMA, CJI. AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — CUSTODIAL DEATH — Court records that the learned counsel for the State of Orissa submits that the State Government is acting promptly ever since it realised that it is the duty of the State Government to act in this matter and that it is hoped that the entire exercise would be completed in another three weeks.

1. Learned counsel for the State of Orissa submits that the State Government is acting promptly ever since it realised that it is the duty of the State Government to act in this matter and that it is hoped that the entire exercise would be completed in another three weeks.

2. List the matter on 5.5.1997.

Order dated April 11, 1997 in W.P. (Crl.) No. 176/95. [1997(7) SCALE (SP) 25]

SCALE (PIL) 1981-97 1447
M.C. MEHTA *Petitioner*
VS
UNION OF INDIA AND OTHERS *Respondents*
CORAM: RANGANATH MISRA, CJI., KULDIP SINGH AND S. MOHAN, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — AIR POLLUTION — STONE CRUSHING INDUSTRIES — Stone crushing operation in the vicinity of Delhi — Total closure of the operation ordered by Union of India — Instead of approaching the Supreme Court in the pending matters, operators filing writ petitions in High Court and obtaining interim orders — Petitions relating to stone crushers pending in High Court directed to be transferred to Supreme Court.

1. In the application under Article 32 of the Constitution challenge is to the continuance of stone crushing operations in the close vicinity of Delhi and consequent pollution emerging out of it. Notice was issued in the matter and after the parties were heard to a considerable extent, liberty was given to the Union of India to deal with the pollutive activities which were objectionable under the Air Pollution Act. After hearing

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Order dated October 8, 1991 in W.P. (C) No. 4677 of 1985 with T.P. (C) Nos. 230-250 of 1991.

them the Union of India made an order directing total closure of the operation. Instead of approaching this Court in the pending matter, though the operators were aware of the fact that the matter was pending in this Court, writ petitions were filed in the Delhi High Court and interim orders have been obtained. We are of the view that since the main matter is pending in this Court and is now ready for hearing the petitions which are pending in the Delhi High Court (relating to stone crushers) and the numbers as specified in the schedule to this order should be transferred immediately for disposal in this Court. We accordingly direct that the said cases be transferred to this Court to be dealt with the main matter which shall be taken up for final disposal on October 29, 1991. The entire record of the cases may be obtained from the Delhi High Court and in case, as Mr. Thakur submits, if any report has been called for, that may also be furnished. We make it clear that no adjournment will be granted on the date of hearing. In regard to cases pending in the High Courts other than relating to stone crushers no order is made at present but the applications shall be listed before a bench presided over by Hon'ble Mr Justice K.N. Singh on October 29, 1991, as already ordered in some connected matters.

SCALE (PIL) 1981-97 1448

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA AND OTHERS *Respondents*

CORAM: K.N. SINGH, KULDIP SINGH AND P.B. SAWANT, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — AIR POLLUTION — STONE CRUSHING INDUSTRIES — Stone crushing operation around Delhi and Haryana State — DDA and HDA directed to file affidavits categorically stating whether stone crusher plants in the concerned areas are situated within the non-conforming areas — Central Pollution Board directed to inspect the plants on a working day and submit a detailed report.

1. After hearing petitioner-in-person and learned counsel for the parties and on perusal of the affidavits we find that in and around Delhi stone crushing is being carried on in four different areas : (1) Lal Kuan, (2) Surajkund, (3) Anand Parvat and (4) Rajakouri. Mr. M.C. Mehta states that so far as the stone crushers located in Lal Kuan and Surajkund are concerned they have set up the crushing plants in the area where setting up of any such plant in the master plan of the Delhi Development Authority and also in the plan of the Haryana Development Authority is not permitted. In this view even if these plants are complying with the pollution standards they are not entitled to operate their plant in those areas. There is no specific document before us to support this contention. We, accordingly, direct the Delhi Development Authority and the Haryana Development Authority to file affidavit stating therein categorically as to whether stone crusher plants in the aforesaid two areas are situated within the non-conforming area. We further direct the Central Pollution Control Board to inspect the stone crushing plant situated in Lal Kuan,

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Order dated November 20, 1991 in W.P.(C) No. 4677 of 1985 with T.C. Nos. 75-89 of 1991, 245-250 of 1990 and W.P. No. 521 of 1987.

Surajkund and Anand Parvat and Rajakouri on a working day and submit a detailed report, regarding the failure of crushing plants to comply with the standard laid down under the Act and the rules framed thereunder indicating its impact on the environment of surrounding areas. The inspection report shall be filed along with affidavit within two weeks. The reply, if any, may be filed within one week thereafter. List these matters after three weeks.

SCALE (PIL) 1981-97 1449

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA AND OTHERS *Respondents*

CORAM: K.N. SINGH, CJI., R.M. SAHAI AND S. MOHAN JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — WATER POLLUTION — Discharge of trade effluents into river Ganges by riparian industries (other than tanneries, distilleries and Municipal Board in respect of which separate order issued) — U.O.I. directed to publish in newspapers notice requiring such industries to file their affidavits before the Court by January 15, 1992 stating steps taken to comply with Court's order dated September 9, 1985 and direction issued by Ministry of Environment and Forests by notification dated January 16, 1991 — If any industry fails to take steps for preventing pollution or following the standard required by the notification, that industry shall be required to be closed.

1. On September 9, 1985, this Court issued orders for issue of notices to all industries situated in the riparian area of river Ganges to stop discharging the effluents from their factories without treating such effluents properly in accordance with the standards prescribed by the Central Board for Prevention and Control of Water Pollution. Pursuant to the direction general notices were published in various newspapers. Some of the industries have filed affidavits but it appears that they have not strictly complied with the order as yet. On January 16, 1991, Ministry of Environment and Forests issued a notification requiring the industries to comply with the standards for emission or discharge of environmental pollutants by December 31, 1991. Nothing has been placed before us to show that these riparian industries (other than tannery, Municipal Board and distilleries in respect of which separate orders have been passed) have complied with the orders issued by this Court or that they have taken steps to comply with Government Notification dated January 16, 1991. This Court's order as well as the government's directions are necessary to be complied with to prevent pollution. We accordingly direct that a general notice shall be published in The Times of India, Delhi, The National Herald, Lucknow, The Hindustan Times, Patna, The Statesman, Calcutta and The Jan Satta, Delhi. The cost of publication of notice shall be borne by Union of India (Ministry of Environment and Forests). The notice shall state that all riparian industries should file their affidavits before this Court by January 15, 1992, stating therein the steps that they have taken to comply with the orders of this court and the directions issued by the Ministry of Environment and Forests vide notification dated January 16, 1991. It is further made clear that if any

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Order dated December 10, 1991 in W.P. No. 3727 of 1985.

industry has failed to take the necessary steps for preventing pollution or following the standards for emission or discharge of environmental pollutants as required by the aforesaid notification, the said industry shall be directed to be closed.

2. List the matter for further orders in the third week of January 1992, before a bench of which N.M. Kasliwal, J. is a member. In addition to the publication of the notices in the newspapers, as directed aforesaid, individual notices to the industries, a list of which shall be supplied by the petitioner, shall also be issued.

SCALE (PIL) 1981-97 1450
M.C. MEHTA *Petitioner*
VS
UNION OF INDIA AND OTHERS *Respondents*

CORAM: KULDIP SINGH AND YOGESHWAR DAYAL, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — AIR POLLUTION — Status-position of various industries — Certain industries have already installed air pollution control devices to the satisfaction of the Pollution Control Board — Board undertakes to submit report in this respect within three weeks after completing inspection process — Certain industries found in process of installation/formulating schemes regarding air pollution control system — Board directed to issue notice to such industries to complete the installation within the time specified — Certain industries claiming to have removed the source of air pollution — Board directed to file details of the manner of removal of air pollution by such industries — Industries not showing any progress regarding installation of air pollution control system in compliance with Supreme Court's order, directed to be closed — D.M. and S.P. directed to ensure compliance with this direction — Further, the Board directed to inspect air pollution control devices as and when they are set up and to obtain suspension or closure orders from this Court.

1. Dr. D.N. Garg, Regional Officer, Uttar Pradesh Pollution Control Board has filed the affidavit dated November 19, 1993. The status-position in relation to 295 industries which responded to the notices issued by the Pollution Control Board has been given in para 5 of the said affidavit.

2. According to the averments in para 5, 64 industries listed in Annexure II at pages 22-160 have already installed air pollution control devices to the satisfaction of the Board. Learned counsel, however, states that process of inspection is going on and complete picture shall emerge thereafter. The Board shall submit report in this respect within three weeks.

3. 144 industries listed in Annexure III at pages 161-172 and further 66 industries listed in Annexure IV at pages 175-180 are in the process of installation/formulating schemes regarding air pollution control system. The Board shall issue notices to these industries to complete the installation by January 31, 1994.

4. According to the affidavit M/s Prakash Iron Foundry and M/s Agra Tannery Leather have removed the source of air pollution. The Board shall file the details within one week

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Order dated December 3, 1993 in W.P. No. 13381 of 1984.

as to how these industries have removed the source of air pollution.

5. Industries listed in Annexure VI at pages 204-207 (except serial No. 13 at page 204) have not shown any progress regarding installation of air pollution control systems in compliance with the orders of this Court dated September 17, 1993. We direct closure of these industries forthwith. We further direct the District Magistrate and the Superintendent of Police concerned to have the orders of this Court complied with forthwith. A report in this respect be sent to this Court by the Board within two weeks. As and when the air pollution control devices are set up, the Board shall inspect the same and obtain orders of suspension of closure from this Court.

6. To be listed on December 17, 1993.

SCALE (PIL) 1981-97 1451

KHATRI & ORS. ETC. *Petitioners*

VS

STATE OF BIHAR & ORS. *Respondents*

CORAM: P.N. BHAGWATI AND BAHARUL ISLAM, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — BIHAR BLINDINGS — CONSTITUTION — ARTICLE 32 — Petitioners complain violation of Art. 21 they having been blinded by police and claim compensation from State — held when Court inquires whether petitioners were blinded by police officials or not, it does so not for adjudicating guilt of any particular officer with a view to punish him but for purpose of deciding whether Art. 21 has been violated and State is liable to pay compensation for such violation.

CODE OF CRIMINAL PROCEDURE, 1973 — SECTION 162 — STATE CANNOT INVOKE THE PROVISION IN A PETITION UNDER ARTICLE 32 OF CONSTITUTION — It being neither an inquiry nor a trial in respect of any offence — even a statement made before a police officer during investigation can be produced and used in evidence provided it is relevant under Evidence Act and S. 162 cannot be a bar against its production or use — Investigation reports pursuant to direction by state under S.3 of Police Act, 1861, cannot be shut out from being produced and considered provided they are relevant under some provision of Evidence Act (Para 5).

CODE OF CRIMINAL PROCEDURE, 1973 — SECTION 172 — Assuming reports made pursuant to investigation ordered under S.3 of Police Act form part of case diary yet the bar created in S. 172 can have no application in a civil proceeding or proceedings under Art. 32 or 226 of the Constitution and particularly when party calling for case diary is neither an accused nor his agent in respect of the offence to which the case diary relates (Paras 6 & 7)

CONSTITUTION — ARTICLE 21 — Whether State in defence can urge that it is not infringing Art. 21 because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence State is not responsible for his action — Court left the question open though observed on a prima facie consideration that several doubts arise as to nature of Art. 21 and its

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Order dated March 10, 1981 in W.P. Nos. 5670 and 6216 of 1980. [1981(1) SCALE 531]

effectiveness if such a plea is accepted (Para 9).
EVIDENCE ACT — SECTION 35 — Reports pursuant to section 3 of Police Act, correspondence and notings are relevant under section 35 of Evidence Act (Paras 11 & 12).

***Referred:** Tehsildar Singh & Another vs The State of Uttar Pradesh (1959) Supp. 2 S.C.R. 875; Emperor v. Aftab Mohd. Khan, AIR 1940 All. 291.; Baliram Tikaram Marathe vs. Emperor, AIR (1945) Nagpur 1; Malakaya Surya Rao v. Janakamma, AIR (1964) A.P. 198.; State of Bihar v. J.A.C. Saldhana (1980) 2 SCR 16; Queen-Empress v. Mannu (1897) 19 All. 360; Kanwar Lal Gupta vs Amar Nath Chawla, (1975) 3 SCC 646; P.C.P. Reddiar vs S. Perumal, (1972) 2 SCR 646; Jagdat v. Sheopal, AIR 1927 Oudh 323; Chandulal v. Pushkar Rai, AIR 1952 Nagpur 271; Lionell Edweris Limited v. State of West Bengal, AIR (1967) Cal. 191; United States vs Nixon, 41 Lawyers Edition (2nd series) 1039.*

1. The question which arises before us for consideration is whether certain documents called for by the Court by its order dated 16th February, 1981 are liable to be produced by the State or their production is barred under some provision of law. The documents called for are set out in the order dated 16th February, 1981 and they are as follows:

1. the CID report submitted by L.V. Singh, DIG, CID (Anti-Dacoity) on December 9, 1980;
2. the CID reports on all the 24 cases submitted by L.V. Singh and his associates between January 10 and January 20, 1981;
3. the letters number 4/R dated 3rd January, 1981 and number 20/R dated 7th January, 1981 from L.V. Singh to the IG, Police;
4. the files containing all correspondence and notings exchange between L.V. Singh, DIG and M.K. Jha, Additional IG, regarding the CID inquiry into the blindings, and
5. the file (presently in the office of the IG, S.K. Chatterjee) containing the reports submitted by Inspector and Sub-Inspector of CID to Gajendra Narain, DIG, Bhagalpur, on 18th July or thereabouts and his letter to K.D. Singh, SP, CID, Patna which has the hand-written observations of M.K. Jha.

2. The State has objected to the production of these documents on the ground that they are protected from disclosure under Sections 162 and 172 of the Code of Criminal Procedure 1973 and the petitioners are not entitled to see them or to make any use of them in the present proceeding. This contention raises a question of some importance and it has been debated with great fervour on both sides but we do not think it presents any serious difficulty in its resolution, if we have regard to the terms of Sections 162 and 172 of the Criminal Procedure Code on which reliance has been placed on behalf of the State.

3. We will first consider the question in regard to the reports submitted by Sh. L.V. Singh, Deputy Inspector General CID (Anti-Dacoity) on 9th December, 1980 and the reports submitted by him and his associates Sh. R.R. Prasad, S.P. (Anti-Dacoity) and Smt. Manjuri Jaurahar, S.P. (Anti-Dacoity) between 10th and 20th January, 1981. These reports have been handed over to us for our perusal by Mr. K.G. Bhagat learned advocate appearing on behalf of the State and it is clear from these reports, and that has also been stated before us on behalf of the State, that by an order dated 28-29th November, 1980 made by the State Government under Section 3 of the Indian Police Act 1861, Sh. L.V. Singh was directed by the State Government to investigate into 24 cases of blinding of under-trial prisoners and it was in discharge of this official duty entrusted to him that he with the associates Sh. R.R. Prasad and Smt. Manjuri Jaurahar investigated these cases and made these reports. These reports set out the conclusions reached by him as a result of his investigation into these cases. The question is whether the production of these reports is hit by Sections 162 and 172 of the Criminal Procedure Code. It may be pointed out that these are the only provisions of law under which the State resists production of these reports. The State has not claimed privilege in regard to these reports under Section 123 or Section 124 of the Indian Evidence Act. All that is necessary therefore is to examine the applicability of Sections 162 and 172 of the Criminal Procedure Code in the present case.

4. Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition Section and clause (g) of that Section defines 'Inquiry' to mean "every inquiry, other than a trial conducted under this Code by a Magistrate or Court". Clause (h) of Section 2 gives the definition of 'investigation' and it says that investigation includes "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf". Section (4) provide

> "4(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating inquiring into, trying or otherwise dealing with such offences".

5. It is apparent from this Section that the provisions of the Criminal Procedure Code are applicable where an offence under the Indian Penal Code or under any other law is being investigated, inquired into, tried or otherwise dealt with. Then we come straight to Section 162 which occurs in chapter XII dealing with the powers of the Police to investigate into offences. That Section, so far as material, reads as under.

> "162(1) No statement made by any person to a police officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
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> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.
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> (2) Nothing in this section shall be deemed to apply to any statement falling

> within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872, or to affect the provisions of section 27 of that Act".

It bars the use of any statement made before a police officer in the course of an investigation under chapter XII, whether recorded in a police dairy or otherwise, but by the express terms of Section, this bar is applicable only were such statement is sought to be used 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made'. If the statement made before a police officer in course of an investigation under chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This section has been enacted for the benefit of the accused, as pointed out by this Court in *Tehsildar Singh & Another v. The State of Uttar Pradesh* (1959) Supp. 2 S.C.R. 875 at 890, it is intended "to protect the accused against the user of statements of witnesses made before the police during investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence." This court, in Tehsildar Singh's case approved the following observations of Braund, J. in *Emperor v. Aftab Mohd. Khan,* AIR 1940 All. 291.

> "As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths."

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in *Baliram Tikaram Marathe vs. Emperor* AIR (1945) Nagpur 1 that "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses." Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the provision to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have taken this view and amongst them may be mentioned the decision of Jaganmohan Reddy, J. in *Malakaya Surya Rao v. Janakamma* AIR (1964) A.P. 198. The present proceeding before us is a writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their Fundamental Rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how section 162 can be invoked by the State in the present case. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed in order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule

10 lays down that at the hearing of the *rule nisi,* if the court is of the opinion that an opportunity be given to the party to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act.

6. We now turn to section 172 which is the other section relied upon by the State. That section reads as follows:

> "172. Diary of proceedings in investigation - (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.
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> (2) Any Criminal Court may send for the police diaries of a case under enquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.
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> (3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officers, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872) shall apply.

The first question which arises for consideration under this section is whether the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates could be said to form part of case diary within the meaning of this section. The argument of Mrs. Hingorani and Dr. Chitale was that these reports did not form part of case diary as contemplated in this section, since the investigation which was carried out by Shri L.V. Singh was pursuant to a direction given to him by the State Government under section 3 of the Indian Police Act 1861, and it was not an investigation under Chapter XII of the Criminal Procedure Code which alone would attract the applicability of section 172. Mrs. Hingorani sought to support his proposition by relying upon the decision of this Court in *State of Bihar v. J.A.C. Saldhana* (1980) 2 SCR 16. Mr. K.G. Bhagat, learned counsel appearing on behalf of the State however, submitted that even though Shri L.V. Singh carrying out the investigation under the direction given by the State Government in exercise of the power conferred under section 3 of the Indian Police Act, 1861, the investigation carried out by him was one under Chapter XII and section 172 was therefore applicable in respect of the reports made by him setting out the result of the investigation. He conceded that it was undoubtedly laid down by this Court in State of Bihar v. J.A.C. Saldhana (supra) that the State Government has power to direct investigation or further investigation under section 3 of the Indian Police Act, 1861, but contended that it was equally clear from the decision in that case that "power to direct investigation or further investigation is entirely different from the method and procedure of investigation and the competence of the person who investigates." He urged that section 36 of the Criminal Procedure Code provides that police officers superior in rank to an officer in-charge of a police station may exercise the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station and Shri L.V. Singh being the Deputy Inspector General of Police, was superior in rank to an officer in charge of a police station and was, therefore, competent to investigate the offences arising from the blinding of the under-trial prisoners and the State Government acted within its powers under section 3 of the Indian Police Act, 1861 in directing Shri L.V. Singh to investigate into these offences. But, "the method and procedure of investigation" was to be the same as that prescribed for investigation by an officer in-charge of a police station under Chapter XII and therefore the investigation made by Shri L.V. Singh was an investigation under that Chapter so as to bring in the applicability of section 172. These rival contentions raise two interesting questions, first, whether an investigation carried out by a superior officer by virtue of a direction given to him by the State Government under section 3 of the Indian Police Act 1861 is an investigation under Chapter XII so as to attract the applicability of section 172 to a diary maintained by him in the course of such investigation and secondly, whether the report made by such officer as a result of the investigation carried out by him forms part of case diary within the meaning of section 172. We do not, however, think it necessary to enter upon a consideration of these two questions and we shall assume for the purpose of our discussion that Mr. K.G. Bhagat, learned counsel appearing on behalf of the State, is right in his submission in regard to both these questions and that the reports made by Shri L.V. Singh setting out the result of his investigation form part of case diary so as to invite the applicability of section 172. But, even if that be so, the question is whether these reports are protected from disclosure under section 172 and that depends upon a consideration of the terms of this section.

7. The object of section 172 in providing for the maintenance of a diary of his proceedings by the police officer making in investigation under Chapter XII has been admirably stated by Edge, C.J. in *Queen-Empress v. Mannu* (1897) 19 All. 360 in the following words:

> "The early stages of the investigation which follows on the commission of a crime must necessarily in the vest majority of cases be left to the police, and until the honesty, the capacity, the discretion and the judgment of the police can be thoroughly trusted, it is necessary, for the protection of the public against criminals, for the vindication of the law and for the protection of those who are charged with having committed a criminal offence that the Magistrate or Judge before whom the case is for investigation or for trial should have the means of ascertaining what was the information, true, false, or misleading which was obtained from day to day by the police officer who was investigating the case and what such police officer acted."

The criminal Court holding an inquiry or trial of a case is therefore empowered by sub-section (2) of section 172 to send for the police diary of the case and the criminal court can use such diary, not as evidence in the case, but to aid it in such inquiry or trial. But, by reason of sub-section (3) of section 172, merely because the case diary is referred to by the criminal court, neither the accused nor his agent are entitled to call for such diary nor are they entitled to see it. If however the case diary is used by the police officer who has made it to refresh his memory or if the criminal court uses it for the purpose of contradicting such police officer in the inquiry or trial, the provisions of section 145, as the case may be, of the Indian Evidence Act would apply and the accused would be entitled to see the particular entry in the case diary which has been referred to for either of these purposes and so much of the diary as in the opinion of the Court is necessary to a full understanding of the particular entry so used. It will thus be seen that the bar against production and use of case diary enacted in section 172 is intended to operate only in an inquiry or trial for an offence and even this bar is a limited bar, because in an inquiry or trial, the bar does not operate if the case diary is used by the police officer for refreshing his memory or the criminal court uses it for the purpose of contradicting such police officer. This bar can obviously have no application where a case diary is sought to be produced and used in evidence in a civil proceeding under Article 32 or 226 of the Constitution and particularly when the party calling for the case diary is neither an accused nor his agent in respect of the offence to which the case diary relates. Now plainly and unquestionably the present writ petition which has been filed under Article 32 of the Constitution to enforce the fundamental right guaranteed under Article 21 is neither an 'inquiry' nor a 'trial' for an offence nor is this court hearing the writ petition a criminal court nor are the petitioners, accused or their agents so far as the offences arising out of their blinding are concerned. Therefore, even if the reports submitted by Shri L.V. Singh as a result of his investigation could be said to form part of 'case diary', it is difficult to see how their production and use in the present writ petition under Article 32 of the Constitution could be said to be barred under Section 172.

8. Realising this difficulty created in his way by the specific language of section 172, Mr. K.G. Bhagat, learned advocate appearing on behalf of the State, made a valiant attempt to invoke the principle behind section 172 for the purpose of excluding the reports of investigation submitted by Sh. L.V. Singh. He contended that if, under the terms of section 172, the accused in an inquiry or trial is not entitled to call for the case diary or to look at it, save for a limited purpose, it is difficult to believe that the Legislature could have ever intended that the complainant or a third party should be entitled to call for or look at the case diary in some other proceeding, for that would jeopardise the secrecy of the investigation and defeat the object and purpose of section 172 and therefore, applying the principle of that section, we should hold that the case diary is totally protected from disclosure and even the complainant or a third party cannot call for it or look at it in a civil proceeding. This contention is in our opinion wholly unfounded. It is based on what may be called an appeal to the spirit of section 172 which is totally impermissible under any recognised canon of construction. Either production and use of case diary in a proceeding is barred under the terms of section 172 or it is not; it is difficult to see how it can be said to be barred on an extended or analogical application of the principle supposed to be underlying that section, if it is not covered by its express terms. It must be remembered that we have adopted the adversary system of justice and in order that truth may emerge from the clash between contesting parties under this system, it is necessary that all facts relevant to the inquiry must be brought before the Court and no relevant fact must be shut-out, for otherwise the Court may get a distorted or incomplete picture of the facts and that might result in miscarriage of justice. To quote the words of the Supreme Court of United States in *United States v. Nixon* 41 lawyers Edition (2nd series) 1039 "The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts within the frame work of the rules of evidence", it is imperative to the proper functioning of the judicial process and satisfactory and certain ascertainment of truth that all relevant facts must be made available to the Court. But the law may, in exceptional cases, in order to protect more weighty and compelling competing interests, provide that a particular piece of evidence, though relevant, shall not be liable to be found, inter alia, in sections 122, 123, 124, 126 and 129 of the Indian Evidence Act and sections 162 and 172 of the Criminal Procedure Code. But being exceptions to the legitimate demand for reception of all relevant evidence in the interest of justice, they must be strictly interpreted and not expansively construed, "for they are in derogation of the search for truth". It would not, therefore, be right to extend the prohibition of section 172 to cases not falling strictly within the terms of the section, by appealing to what may be regarded as the principle or spirit of the section. That is a feeble reed which cannot sustain the argument of the learned advocate appearing on behalf of the State. It would in fact be inconsistent with the Constitutional commitment of this Court to the rule of law.

9. That takes us to the question whether the reports made by Sh. L.V. Singh as a result of the investigation carried by him and his associates are relevant under any provision of the Indian Evidence Act so as to be liable to be produced and received in evidence. It is necessary, in order to answer this question, to consider what is the nature of the proceeding before us and what are the issues which arise in it. The proceeding is a writ petition under Article 32 for enforcing the fundamental right of the petitioners enshrined in Article 21. The petitioners complain that after arrest, whilst under police custody, they were blinded by the members of the police force, acting not in their private capacity, but as police officials and their fundamental right to life guaranteed under Article 21 was therefore violated and for this violation, the State is liable to pay compensation to them. The learned Attorney General who at one stage appeared on behalf of the State at the hearing of the writ petition contended that the inquiry upon which the Court was embarking in order to find out whether or not the petitioners were blinded by the police officials whilst in police custody was irrelevant, since, in his submission, even if the petitioners were so blinded, the State was not liable to pay compensation to the petitioners first, because the State was not constitutionally or legally responsible for the acts of the police officers out side the scope of their power or authority and the blindings of the under-trial prisoners effected by the police could not therefore be said to constitute violation of their fundamental right under Article 21 by the State and secondly, even if there was violation of the fundamental right of the petitioners under Article 21 by reason of the blindings effected by the police officials, there was, on a true construction of that Article, no liability on the State to pay compensation to the petitioners. The attempt of the learned

Attorney General in advancing this contention was obviously to preempt the inquiry which was being made by this Court, so that the Court may not proceed to probe further in the matter. But we do not think we can accede to this contention of the learned Attorney General. The two questions raised by the learned Attorney General are undoubtedly important but the arguments urged by him in regard to these two questions are not prime facie so strong and appealing as to persuade us to decide them as preliminary objections without first inquiring into the facts. Some serious doubts arise when we consider the argument of the learned Attorney General. If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the Court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would *ex concessionis* be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the Fundamental Right guaranteed under Article 21, the petitioner who is aggrieved can move the Court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the Fundamental Right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the Fundamental Right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the Fundamental Right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the Fundamental Right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the Fundamental Right to him and has also given him the Fundamental Right of moving the court for enforcement of his Fundamental Right, the court cannot give him any relief. These are some of the doubts which arise in our mind even in a prima facie consideration of the contention of the learned Attorney General and we do not, therefore, think it would be right to entertain this contention as a preliminary objection without inquiring into the facts of the case. If we look at the averments made in the writ petition, it is obvious that the petitioners cannot succeed in claiming relief under Article 32 unless they establish that their Fundamental Right under Article 21 was violated and in order to establish such violation, they must show that they were blinded by the police officials at the time of arrest or whilst in police custody. This is the fundamental fact which must be established before the petitioners can claim relief under Article 32 and logically therefore the first issue to which we must address ourselves is whether this foundational fact is shown to exist by the petitioners. It is only if the petitioners can establish that they were blinded by the members of the police force at the time of arrest or whilst in police custody that the other questions raised by the learned Attorney General would arise for consideration and it would be wholly academic to consider them if the petitioners fail to establish this foundational fact. We are, therefore, of the view, as at present advised, that we should first inquire whether the petitioners were blinded by the police officials at the time of arrest or after arrest, whilst in police custody, and it is in the context of this inquiry that we must consider whether the reports made by Sh. L.V. Singh are relevant under the Indian Evidence Act so as to be receivable in evidence.

10. We may at this stage refer to one other contention raised by Mr. K.G. Bhagat on behalf of the State that if the Court proceeds to hold an inquiry and comes to the conclusion that the petitioners were blinded by the members of the police force at the time of arrest or whilst in police custody, it would be tantamount to adjudicating upon the guilt of the police officers without their being parties to the present writ petition and that would be grossly unfair and hence this inquiry should not be held by the Court until the investigation is completed and the guilt or innocence of the police officer is established. We cannot accept this contention of Mr. K.G. Bhagat. When the Court trying the writ petition proceeds to inquire into the issue whether the petitioners were blinded by police officials at the time of arrest or whilst in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. The nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue cannot, have any relevance much less any binding effect, in any criminal proceeding which may be taken against a particular police officer. A situation of this kind sometimes arises when a claim for compensation for accident caused by negligent driving of a motor vehicle is made in a civil Court or Tribunal and in such a proceeding it has to be determined by the Court, for the purpose of awarding compensation to the claimant, whether the driver of the motor vehicle was negligent in driving, even though a criminal case for rash and negligent driving may be pending against the driver. The pendency of a criminal proceeding cannot be urged as a bar against the Court trying a civil proceeding or a writ petition where a similar issue is involved. The two are entirely distinct and separate proceedings and neither is a bar against the other. It may be that in a given case if the investigation is still proceeding, the Court may defer the inquiry before it, until the investigation is completed or if the Court considers it necessary in the interests of Justice, it may postpone its inquiry even after the prosecution following upon the investigation is terminated, but that is the matter entirely for the exercise of the discretion of the Court and there is no bar precluding the Court from proceeding with the inquiry before it merely because the investigation or prosecution is pending.

11. It is clear from the aforesaid discussion that the fact in issue in the inquiry before the Court in the present writ petition is whether the petitioners were blinded by the members of the police force at the time of the arrest or whilst in police custody. Now in order to determine whether the reports made by Sh. L.V. Singh as a result of the investigation carried out by him and his associates are relevant, it is necessary to consider whether they have any bearing on the fact in issue required to be decided by the Court. It is common ground that Sh. L.V. Singh was directed by the State Government under section 3 of the Indian Police Act, 1861 to investigate into twenty four cases of blinding of under-trial prisoners and First

Information Reports were lodged that they were blinded by the police officers whilst in police custody. Sh. L.V. Singh through his associates carried out this investigation and submitted his reports in the discharge of the official duty entrusted to him by the State Government. These reports clearly relate to the issue as to how, in what manner and by whom the twenty-four undertrial prisoners were blinded, for that is the matter which Shri L.V. Singh was directed by the State Government to investigate. If that be so, it is difficult to say how the State can resist the production of these reports and their use as evidence in the present proceeding. These reports are clearly relevant under section 35 of the Indian Evidence Act which reads as follows:

> "35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register of record is kept, is itself a relevant fact."

These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh. L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by section 35. The language of section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in *Kanwar Lal Gupta v. Amar Nath Chawla* (1975) 3 SCC 646. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under section 35 and this Court held that they were on the ground that they were "made by public servants, in discharge of their official duty and they were relevant under the first part of section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent.". This Court in fact followed an eariier decision of the Court in *P.C.P. Reddiar v. S. Perumal* (1972) 2 SCR 646. So also in *Jagdat v. Sheopal* AIR 1927 Oudh 323, Wazirhasan J. held that the result of an inquiry by a Kanungo under section 202 of the Code of Criminal Procedure 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in *Chandulal v. Pushkar Rai* AIR 1952 Nagpur 271 where the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under section 35 as reports made by public officers in the discharge of their official duties, in so far as they supply information of official proceedings and historical facts. The Calcutta High Court also held in *Lionell Edweris Limited v. State of West Bengal* AIR (1967) Cal. 191, that official correspondence from the Forest Officers to his superior, the conservator of Forests, carried on by the Forest Officer, in the discharge of his official duty would be admissible in evidence under section 35. There is therefore no doubt in our mind that the reports made by Sh. L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst in police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer pursuant to the direction issued by the State Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates are relevant under section 35 and they are liable to be produced by the State Government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the Court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government, it may be possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present writ petition. We may point out that though in our order dated 16th February 1981, we have referred to these reports as having been made by Shri L.V. Singh and his associates between January 10 and January 20, 1981, it seems that there has been some error on our part in mentioning the outer date as January 20, 1981 for we find that some of these reports were submitted by Shri L.V. Singh even after January 20, 1981 and the last of them was submitted on 27th January 1981. All these reports including the report submitted on 9th December, 1980 must therefore be filed by the State and taken as forming part of the record to be considered by the Court in deciding the question at issue between the parties.

12. What we have said above must apply equally in regard to the correspondence and notings referred to as items three and four in the order dated 16th February 1981 made by us. These notings and correspondence would throw light on the extent of involvement, whether by acts of commission or acts of omission, of the State in the blinding episode and having been made by Shri L.V. Singh and M.K. Jha in discharge of their official duties, they are clearly relevant under section 35 and they must therefore be produced and taken on record in the writ petition, so also the reports submitted by Inspector and Sub-Inspector of CID to Gajendra Narain, DIG, Bhagalpur on 18th July and his letter to Shri K.D. Singh, Superintendent of Police, CID, Patna containing hand-written endorsement of Shri M.K. Jha must for the same reasons be held to be relevant under section 35 and must be produced by the State and be taken as forming part of the record of the writ petition.

13. Since all these documents are required by the Central Bureau of Investigation for the purpose of carrying out the investigation which has been commenced by them pursuant to the approval given by the State Government under section 6 of the Delhi Special Police Establishment Act, we would direct that five sets of photostat copies of these documents may be prepared by the office, one for Mrs. Hingorani, learned advocate appearing on behalf of the petitioners, one for Mr. K.G. Bhagat, learned advocate appearing on behalf of the State, one for Dr. Chitale who is appearing *amicus curiae* at our request and two for the Court, and after taking such photostat copies these documents along with the other documents which have been handed over to the Court by the State shall be returned immediately to Mr. K.G. Bhagat, learned advocate appearing on behalf of the State, for being immediately made available to the Central Bureau of Investigation for carrying out its investigation so that the investigation by the Central Bureau of Investigation may not be impeded or delayed. We hope and trust that the Central Bureau of Investigation will complete its investigation expeditiously without any avoidable delay.

SCALE (PIL) 1981-97 1463

DR. UPENDRA BAXI *Petitioner*

VS

STATE OF U.P. & ANR. *Respondents*

CORAM: P.N. BHAGWATI AND O. CHINNAPPA REDDY, JJ.

PUBLIC INTEREST LITIGATION — RIGHTS OF WOMEN — AGRA PROTECTIVE HOME — SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND GIRLS ACT (SITA) READ WITH U.P, RULES, 1961 —

A. When a women or girl is admitted in the Home under the orders of the Additional District Magistrate (City), the Superintendent should comply with all the provisions of the Rules in regard to the treatment to be meted out to her, even though she may not have been admitted under the provisions of the Act. The provisions in the Rules such as Rules 8, 11, 19, 20, 22, 23, 24, 26, 31, 34 and 35 in regard to the treatment to be meted out to a woman or girl admitted to the Home, are provisions laying down humane conditions ensuring the right to live with human dignity and they must, therefore, be scrupulously followed by the Superintendent even in regard to women and girls admitted otherwise than under the provisions to the Act (Para 5).

It is indeed regrettable that the 19 mentally retarded inmates should not have been supplied with railway ticket as contemplated under Sub-rule (4) of Rule 37, even though that rule may not be strictly applicable. If not under the rule, at least on humane grounds, Miss Srivastava should have enquired from these 19 inmates (other than Poleena, Mona and Meera) as to where they intended to go and whether they had any money for the railway ticket and for their own subsistence and how they proposed to look after themselves. Miss Srivastava could have, if necessary, obtained the orders of the Additional District Magistrate (City) or the Chief Inspector for the purpose of supplying these nineteen inmates with railway ticket at the time of discharge. (Para 11).

B. Directions to ADM (City) Agra to tell the Court — (i) Under what law he has been sending women and girls to the Government Protection Home, Agra. (Para 4); (ii) When did he receive applications from 19 deranged inmates and what did he do to satisfy himself that their discharge was justified (Para 10); (iii) Whether it was pointed out to him that these 19 inmates were mentally retarded and if so what steps he took to protect their interest. (Para 13); (iv) What made him discharge 3 inmates suffering from TB and produce the applications of these inmates for discharge with his orders thereon. (Para 16, 15)

C. Directions to Superintendent of the Home to tell the Court — (i) Whether she has scrupulously followed the Rules (Para 6); (ii) Whether she sent the inmates for medical examination under Rule 8(4) and if so on what dates and whether report was sent to

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Order dated July 31, 1981 in Writ Petition No. 1900 of 1981. [1981(3) SCALE 1136]

District Magistrate (Para 6); (iii) Whether she made any entry on the health of the 19 mentally retarded in the Inmates Register and to produce the Register in Court. (Para 6,11); (iv) When did she make the applications for discharge of the 3 TB inmates. (Para 15); (v) Whether she had any of the 5 TB inmates examined and sent to hospital for treatment and what treatment was given. (Para 17); (vi) Whether she inquired from the 3 TB inmates discharged as to where they were going and who would look after them. (Para 17); (vii) Produce the entire record of admission and discharge of 19 and 5 inmates alongwith record showing medical treatment given. (Para 17); (viii) She must submit to the District Judge Agra a monthly report on the present 21 TB inmates, 40 V.D. inmates, and from time to time inform the judge on action recommended for the 33 mentally retarded inmates and implementation of these recommendations. (Paras 21, 23, 24); (ix) Whether she arranged for medical examination of the 21 TB, 40 V.D. & 33 mentally retarded inmates and what treatment was given to them (Paras 20, 23, 24); (x) Whether any vocational or other training programmes are conducted in the Home for the 33 mentally retarded. (Para 24)

D. Directions to U.P. Govt to tell the Court or to provide — (i) How many protective homes are there in U.P. and how many women or girls are sent to these. (Para 3); (ii) 40 V.D. inmates regular medical treatment as prescribed in report of the panel of doctors (Para 23); (iii) The costs, charges and expenses of accommodating the 33 mentally retarded inmates in some institute for the mentally handicapped. (Para 25); (iv) Steps being taken to formulate and implement a scheme for vocational training and rehabilitation of the inmates of homes in U.P. (Para 28); (v) Appoint non-official members to the Board of Visitors. (Para 29).

E. Medical Directions — (Para 21-25).

F. Direction to District Magistrate (Para 18).

1. When this Writ Petition came up for hearing before us on 8th May, 1981 we made an order giving various directions in order to ensure that the inmates of the protective Home at Agra do not continue to live in inhuman and degrading conditions and that the right to live with dignity enshrined in Article 21 of the Constitution is made real and meaningful for them. We gave to the State Government which is running the home, the entire period of vacation for carrying out these directions. Miss Srivastava, Superintendent of the Home, has filed an affidavit before us setting out the action taken by the State Government with a view to complying with these directions.

2. Before we proceed to consider how far the directions made by us have been complied with we should like to mention that Miss Srivastava has insinuated in paragraph 2 of her affidavit that the present petition has been filed by Dr. Baxi and Mrs. Latika Sarkar "as a last resort to compel the Government to leave the present accommodation" and their sole object is to secure that the building where the Home is located may be vacated by the Government. We are surprised that such a baseless insinuation should have been made by a responsible person like the Superintendent of the Home. The suggestion of a collusion between the landlord of the building on the one hand and Dr. Upendra Baxi and Mrs. Latika Sarkar on the other, is most reprehensible and we unhesitatingly condemn it in the strongest terms. Dr. Upendra Baxi and Mrs. Latika Sarkar have filed the petition as a "public interest" litigation with a view to ensuring to the inmates of the Home the right to live with human dignity enshrined in Article 21 of the Constitution and what they have stated in their petition and in the subsequent memoranda filed by them is not only borne out by the report of Shri N.K. Sharma, Chief Judicial Magistrate made on 18th November, 1980 but also by the subsequent reports. We very much wish that such an insinuation had not been made by Miss Srivastava.

3. We are also surprised to learn from paragraph three of the affidavit of Miss Srivastava that not a single women or girl has been sent to the Home under Sub-section (2) of Section 10 or Sub-section (2) of Section 17 or Sub-section (2) of Section 19 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter referred to as ACT). The Home has been established by the Government as a protective home under the Act and we fail to understand how is it that not a single woman or girl has ever been sent to the Home under the provisions of the Act. We should like to know from the State Government as to how many protective Homes established or licensed by the State Government under the provisions of the Act and the Uttar Pradesh Suppression of Immoral Traffic in Women & Girls Rules, 1961 (hereinafter referred to as "Rules") are there in the State of Uttar Pradesh and how many women or girls are sent to these protection Homes under the provisions of the Act.

4. We should also like to know from the Additional District Magistrate (City), Agra as to what are the circumstances in which and the provisions of law under which he has been sending women and girls to provisions of law under which he has been sending women and girls to the Home in Agra. We should also like to know from the Additional District Magistrate (City), Agra as how many women or girls he has sent to the Home every year during the last five years and what are the circumstances in which he has so sent them. We may make it clear that we do not wish to suggest for a moment that no women or girls whose cases do not fall within Sub-section (2) of Section 10 or Sub-section (2) of Sec 17 or Sub-section (2) of Section 19, but who are in distress for want of shelter over their head, should be sent to the Home. The Home may legitimately and whenever possible should, provide protection to women and girls who are helpless on account of want of shelter or who are in need of protection. But, what we wish to know is, how is it that no women or girls have so far been sent to the Home under the provisions of the Act and what are the circumstances in which women and girls have in fact been sent to the Home.

5. We may also emphasise that when a woman or girl is admitted in the Home under the orders of the Additional District Magistrate (City), the Superintendent should comply with all the provisions of the Rules in regard to the treatment to be meted out to her, even though she may not have been admitted under the provisions of the Act. The provisions in the Rules such as Rules 8, 11, 19, 20, 22, 23, 24, 26, 31, 34, and 35 in regard to the treatment to be meted out to a woman or girl admitted to the Home, are provisions laying down humane conditions ensuring the right to live with human dignity and they must, therefore, be scruplously followed by the Superintendent even in regard to women and girls admitted otherwise than under the provisions of the Act.

6. We should like to know from Miss Srivastava in an affidavit to be filed by her whether she has scruplously followed the provisions of the aforesaid Rules in regard to the inmates admitted to the Home. We should like Miss Srivastava to produce at the next hearing of the Writ Petition the Inmates Register, in form 6, which is required to be maintained under Sub-rule (1) of Rule 8. The medical report which has been filed before us shows that there are a number of women and girls suffering from extra pulmonary TB. We should like to know from Miss Srivastava whether they were taken to the nearest hospital for admission as required by Sub-rule (4) of Rule 8 and if they were so taken, then on what date or dates and whether a report to that effect was sent to the District Magistrate and to the nearest Magistrate in compliance with that sub rule.

7. We directed by our order dated 8th May, 1981 that the panel of doctors appointed by us should carry out medical check up of inmates in the Home and make a report to us by 31st May, 1981. Since the time granted by that order was not adequate an application was made to the learned Vacation Judge for extension of time and on the application the learned Vacation Judge extended the time for submission of the report up to 20th July, 1981 and also directed that facilities be made available for transporting inmates to the S.N. Medical College, Agra, for being examined by the panel of doctors appointed by us.

8. Pursuant to these directions the inmates of the Home were taken to the S.N. Medical College, Agra and were examined by a panal of doctors and the report of medical check carried out by them has been placed before us. It appears from the report that the 19 inmates whose names were set out in paragraph 17 of the memorandum of Dr. R.S. Sodhi dated 21 April 1981 and who had, according to the averments made in that memorandum become insane or were of deranged mind, were discharged by Miss Srivastava and were no longer in the Home. Significantly, barring 3 all the rest out of these 19 inmates were discharged by Miss Srivastava subsequent to the making of our first order dated 16th April, 1981 where we took note of the fact that there were a number of inmates in the Home who had become insane or were in a deranged state of mind. According to the affidavit of Miss Srivastava, these 19 inmates were discharged because they wanted to be released and they made applications in writing for being discharged and the necessary orders for discharge were passed on the applications by the Additional District Magistrate (City).

9. Now, most of these inmates had been in the Home for over two years, some of them being in the Home since 1972, 1974 and 1976 and it is difficult to understand how suddenly at or about the time of making of our order dated April 16, 1981, these 19 inmates took it into their head to apply for being discharged and were in fact discharged. We cannot help entertaining an uneasy feeling that these 19 inmates came to be discharged from the Home merely in order to avoid an inquiry by this Court.

10. We should like to know from the Additional District Magistrate (City) as to when he received the applications of these 19 inmates for discharge from Miss Srivastava and what enquiries he made for the purpose of satisfying himself as to whether circumstances existed which justified the discharge of these 19 inmates. Miss Srivastava has admitted in her affidavit that barring Poleena, Mona and Meera who are presently undergoing treatment at a Mental Hospital, the rest of the 16 inmates were "to some extent mentally retarded" and yet, despite this fact it is surprising that she should have obtained orders for discharging them and sent them out in the open world without any protection or care.

11. We should like to know whether Miss Srivastava made any entry in regard to the health of these 19 inmates in the Inmates Register on the day of discharge. We do not know whether Miss Srivastava while discharging these 19 inmates (except perhaps Poleena, Mona and Meera), enquired of them as to where they proposed to go and it is indeed regrettable that they should not have been supplied with railway ticket as contemplated under Sub-rule (4) of Rule 37, even though that rule may not be strictly applicable. If not under the rule, at least on humane grounds, Miss Srivastava should have enquired from these 19 inmates (other than Poleena, Mona and Meera) as to where they intended to go and whether they had any money for the railway ticket and their own subsistence and how they proposed to look after themselves. Miss Srivastava could have, if necessary, obtained the orders of the Additional District Magistrate (City) or the Chief Inspector for the purpose of supplying these nineteen inmates with railway ticket at the time of discharge.

12. We do not wish to place any blame on the shoulders of Miss Srivastava for following the practice of discharging inmates from the Home after obtaining orders from the Additional District Magistrate (City), but so far as these 19 inmates are concerned, we are not at all happy that they should have been discharged soon after the making of our order dated 16th April, 1981 and we may point out that this order received wide publicity in the newspapers on 17th April, 1981 and though most of them were mentally retarded they should have been sent out into the open world without even a railway ticket or any money.

13. Before we part with this topic, we should like to know from the Additional District Magistrate (City) whether it was pointed out to him in the applications for release forwarded by Miss Srivastava that Poleena, Mona and Meera were in mentally deranged state of mind needing treatment in the Mental Hospital and the remaining 16 inmates were mentally retarded and if so, what steps did he take in order to protect the interest of these 19 inmates. We may point out that according to the statements of Dr. Sodhi dated 21st April, 1981 and 5th July, 1981, these 19 inmates, whose names were mentioned in the list given to him and to Shri N.K. Sharama, Chief Judicial Magistrate, on 17th November, 1980, duly signed by the Staff Nurse of the Home, were not just mentally retarded but were in a deranged state of mind. If this be true, the position assumes still more serious dimensions.

14. We find that according to the report of Shri N.K. Sharma, Chief Judicial Magistrate dated 18th November, 1980 as also the statement of Dr. Sodhi in paragraph 4 of his memorandum dated 5th July 1981, there were five girls who were suffering from TB and their names are given in the statement of Dr. Sodhi. It is clear from the record that three out of these five inmates were discharged from the Home by Miss Srivastava after the making of our order dated 16th April, 1981.

15. We should like to know from Miss Srivastava as to when the applications for discharge of these three inmates were made and we should also like the Additional District Magistrate (City) to produce before us at the next hearing of the writ petition the original applications made by these three inmates as also the orders made by him on these applications if they are available with him.

16. We should further like to know from the Additional District Magistrate (City) as to what, in his opinion, were the circumstances which justified the making of the order of discharge in the case of these 3 inmates and whether, before making the order of discharge, he satisfied himself as to the necessity or propriety of discharging these three inmates.

17. We should like to know from Miss Srivastava as to whether any of these five inmates (and we may for the sake of completeness give here the names, namely, Chhoti Agiat, Kamla, Maigani, Suman and Sushila, were medically examined at the time of admission and discharge and whether they were at any time sent to the TB Hospital for the purpose of treatment and what treatment was given to them. We would require Miss Srivastava to produce before us at the next hearing of the writ petition the entire record relating to the admission and discharge of these five inmates as also the 19 inmates mentioned in the proceeding paragraph-along with the record showing the medical treatment given to these inmates. We should also like to know from Miss Srivastava as to whether she made any enquiry from these five inmates before discharging them as to where they were going and who was going to take care of them or did she just send them out in the open world without bothering to enquire as to what would be their fate, particularly when they were suffering from T.B.

18. We were told by Mr. R.K. Bhatt, learned advocate appearing on behalf of the respondents, that the applications for discharge made by the above 19 mentally retarded inmates and five inmates suffering from TB as also the orders of discharge made on these applications formed part of the record of the Home which had been taken charge of by the District Judge. If this be correct, we should like the District Judge to send to this Court within ten days from today the original applications for discharge as also the orders of discharge made on them.

19. The medical report submitted by the panel of doctors shows that out of 50 inmates of the Home examined by Dr. M.L. Mehrotra, Director of T.B. Demonstration Training Centre and Chest Institute, Agra, 21 were found to be suffering from T.B., 14 were required to be kept under observation and in the case of 8, retesting is required to be carried out before any definite conclusion could be reached. The name of these 21 inmates who were found to suffer from extra pulmonary tuberculosis are given in the report and the distressing fact which appears from the report is that most of these 21 inmates are very young-some of them being even below the age of 18.

20. We should like to know from Miss Srivastava as to whether any medical examination of these 21 inmates was held at the time when they were admitted into the Home and what medical treatment has been given to them during the period of their residence in the Home and since when such medical treatment is being given to them and what is the result of such medical treatment.

21. We would direct that these 21 inmates should be taken to the T.B. Hospital, Agra for treatment and they should either be hospitalised in the T.B. Hospital, Agra or kept at some sanitorium or other place where T.B. patients are kept, because their continued residence in the Home might constitute a source of danger of infection to the other inmates. So far as the 14 inmates required to be kept under observation are concerned, we would direct that they should be kept under regular observation of the T.B. Demonstration Training Centre and Chest Institute, Agra, so that a proper and adequate programme of treatment can be pursued in regard to them and they may be saved from the evil effect of this dreadful disease. Miss Srivastava is directed to submit a monthly report in regard to the condition of these 21 and 14 inmates to the District Judge, Agra.

22. The medical report also shows that Dr. G.G. Dhir, incharge, V.D. and Skin diseases, S.N. Medical College, Agra examined the inmates in the Home for the purpose of ascertaining whether any of them was suffering from venereal or other skin diseases and the result of his examination discloses that out of 50 inmates examined by him, 11 are suffering from secondary syphilis, 20 from bacterical vaganities, 1 from Viginal Venereal Warts, 1 from Chanchoride, 2 from Herpes Progematis, 1 from Scabies and 4 from suspected Syphilis. The names of these 40 inmates suffering from one or the other form of sexually transmitted disease arc given in the report and the report shows that most of these inmates are young girls, some of them being less than 18 years of age. It is a most distressing state of affairs that so many young girls should have their lives blasted by sexually transmitted diseases.

23. We should like to know from Miss Srivastava as to whether these 40 inmates were found to suffer from sexually transmitted diseases at the time when they were admitted, because we presume that they must have been medically examined at the time when they were admitted into the Home. We should also like to know what medical treatment was given to these 40 inmates during the period of their residence in the Home and what steps were taken in order to provide a cure for their diseases. The report points out what is the medical treatment which must be given to these 40 inmates and we would direct the State Government as also the Superintendent of the Home to provide to these 40 inmates regularly the medical treatment prescribed in the report. The State Government as also the Superintendent of the Home will ensure that every three months these 40 inmates undergo pathological examination for the purpose of determining the extent of their disease and follow-up treatment is also made available to them as directed in the report made by Dr. G.G. Dhir. Miss Srivastava, Superintendent, will report to the District Judge every month the progress made in regard to the condition of these 40 inmates.

24. It also appears from the medical report that 50 inmates of the Home were examined by Dr. R.K. Jain, In-charge of the Department of Psychiatry. S.N. Medical College, Agra for the purpose of ascertaining whether any of the inmates had psychiatric problem. The report shows that out of these 50 inmates who were examined by Dr. R.K. Jain 10 were found to be suffering from severe mental retardation 2 from profound mental retardation, 4 from Mild Mental Retardation, 2 from Inadequate Personality, 3 from Mild anxiety, 8 from Moderate mental retardation and 4 from Borderline mental retardation. The names of these 33 inmates suffering from different degrees of mental retardation are given in the report. The report says that these 33 inmates who are found to be suffering from mental retardation in varying degrees were not medically examined at the time they were admitted into the Home. We should like to know from Miss Srivastava, the Superintendent of the Home, as to whether this is true. We should also like to know from Miss Srivastava as to whether any psychiatric treatment was given to them and if so when and at what place. We should also like to know from Miss Srivastava as to whether any vocational or other training programmes are conducted in the Home for the purpose of rehabilitating these 33 mentally retarded inmates. We should also like to know whether any provision for separate accommodation of these 33 mentally retarded persons is made available in the Home or they are accommodated along with other inmates.

25. We would direct the State Government and the Superintendent of the Home to consult Dr. R.K. Jain, Reader in Psychiatry, S.N. Medical College, Agra for the purpose of deciding which category of inmates as also which particular inmate should be transferred to some Institute for Mentally Handicapped. We are told that there is one such institute in Okhla, New Delhi and another at Lucknow. It is not desirable that the mentally retarded inmates should live with normal inmates as it is likely to have adverse effect on both the categories. The Superintendent of the Home is directed to inform the District Judge, Agra from time to time as to the action recommended by Dr. R.K. Jain in regard to these 33 mentally retarded inmates and the programme of implementation of such recommendation. Whatever may be the costs, charges and expenses required to be incurred for the purpose of accommodating any one or more of these 33 mentally retarded persons in some institute for mentally handicapped must be borne by the Government of Uttar Pradesh, particularly since this year happens to be the International Year of the Disabled.

26. Miss Srivastava has stated in paragraph 7 of her affidavit that Lalita has been transferred to the mental home despite the fact that "she was found only to be mentally retarded and not a fit case for admission in the asylum." Miss Srivastava has suggested in paragraph 7 that despite the "disinclination of the Mental Home to receive Lalita, the Mental Home was persuaded by the City Magistrate to admit her as patient" in view of the order dated 8th May 1981 made by this Court. We are surprised that the order made by us on 8th May, 1981 should have been interpreted by Miss Srivastava or the Additional District Magistrate, City, as an order to transfer Lalita to the Mental Home irrespective of the fact whether she was in such mental condition as deserved to be admitted to the Mental Hospital. We had clearly stated in our order dated 8th May 1981, that "Lalita shall be transferred provided the Mental Home is prepared to admit her." If the Mental Home was not prepared to admit Lalita on the ground that she was not insane, but was only mentally retarded, we do not see how our order dated 8th May, 1981, could be utilised for the purpose of forcing Lalita into the Mental Asylum. We therefore direct that Lalita be immediately removed to the Home and that she may be examined by Dr. R.K. Jain Reader in Psychiatry, S.N. Medical College, Agra for proper diagnosis and further programme of treatment.

27. That leaves only one direction given by us in our order dated 8th May, 1981 and that relates to putting up of two temporary latrines and temporary bathrooms. Miss Srivastava has stated in her affidavit that this direction has been carried out by the State Government and in view of this statement made on oath by Miss Srivastava, nothing further remains to be done so far as this direction is concerned.

28. Before we close, we must point out that we had directed the State Government by our order dated 8th May, 1981 to put forward a scheme for vocational training and rehabilitation of inmates of Protective Homes. This direction does not yet seem to have been carried out by the State Government. We would expect the State Government at the next hearing of the writ petition to state as to what steps are being taken by the State Government for the purpose of formulating and implementing a scheme for vocational training and rehabilitation of inmates of various Protective Homes in the State of Uttar Pradesh. This is a positive requirement of Rule 20 of the Rules.

29. We are also not informed as to what steps have been taken by the State Government to reconstitute the Board of Visitors. It is surprising that though the term of the non-official members of the Board of Visitors has, according to the affidavit of Miss Srivastava, expired, the meetings of the Board of Visitors are still being held with the same members and the State Government does not seem to have taken any steps for making appointments of non-official members so as to regularise the Board of Visitors. We hope and trust that the necessary steps will be taken by the State Government in this behalf before the next hearing of the writ petition.

30. The writ petition will now stand adjourned to 18th August, 1981.

SCALE (PIL) 1981-97 1471

KHATRI & ORS. *Petitioners*

VS

STATE OF BIHAR & ORS. *Respondents*

CORAM: P.N. BHAGWATI AND R.S. PATHAK, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — BIHAR BLINDINGS — CRIMINAL LAW — Under-trial Prisoners — Direction issued.

1. This Writ Petition comes up for hearing before us for consideration of the Scheme which has been put forward by the State of Bihar for training and rehabilitation of the blinded undertrial prisoners. The scheme envisages training of 33 blinded undertrial prisoners at the National Institute of Visually Handicapped, Dehra Dun and their rehabilitation after the training period is completed. The National Institute of Visually Handicapped, Dehra Dun is a reputed Institute for training of blind persons and the Director of the Institute, Mr. Lal Adwani, is himself a blind person and he is well-known for the interest which he is taking in programmes for training and rehabilitation of blind persons. The Scheme lays down a carefully drawn programme of training and commends itself to us and we have no doubt that if the blinded undertrial prisoners for whose benefit the Writ Petition has been filed take advantage of the Scheme they will be able to receive proper training and will be in a position to rehabilitate themselves and become useful members of the Society. We are informed that three of the undertrial prisoners, namely, Umesh Yadav, Salig Ram Sah and Kamal Manial have already been admitted in the Institute and they are receiving training there. Five of the blinded undertrial prisoners, namely, Mahesh Ravi Das, Srinivas Tiar, Lakhan Mandal, Nand Lal Goswami and Wasir Mian have not turned up for being admitted to the Institute. Two other blinded undertrial prisoners, namely, Lakhi Builder and Salig Ram Tanti have declined to go to the Institute for the purpose of training and rehabilitation. On the last occasion when the Writ Petition was taken up for hearing, three blinded undertrial prisoners, namely, Patel Sah, Dev Raj Khatri and Baljeet Singh expressed their willingness to go to the Institute and the District Magistrate, Bhagalpur will therefore contact these three blinded undertrial prisoners and arrange for their transportation from Bhagalpur to the Institute at Dehra Dun and ensure that they are admitted to the Institute. We have been informed by Mrs. Hingorani that two more blinded undertrial prisoners, namely, Pawan Kumar Singh and Chamak Lal Rai are also willing to be admitted to the Institute. Mr. P.R. Mridul learned counsel appearing on behalf of the State of Bihar assures that the State Govt. will take immediate steps for the purpose of taking them from Delhi to Dehra Dun for being admitted to the Institute. So far as the other blinded undertrial prisoners are concerned whose names have been given in the Scheme, we are informed by Mr. P.R. Mridul that the District Magistrate, Bhagalpur has already contacted them and that they will be taken to Dehra Dun for the purpose of being admitted as soon as vacancies are available in the Institute. The State Govt. and the District Magistrate, Bhagalpur will therefore contact these blinded undertrial prisoners as soon as they receive intimation from the Institute that there are available vacancies and will immediately take necessary steps for the

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Order dated February 2, 1982 in W.P. No. 5670 of 1980. [1982(1) SCALE 519] purpose of transporting them to Dehra Dun so that they can be admitted to the Institute for the purpose of *training*.

2. We are informed that the blinded undertrial prisoners are receiving a sum of Rs. 125/- by way of interest on the amount of Rs. 15,000/- which has been deposited in their respective names out of the Prime Minister's Fund. The Govt. of Bihar has also deposited a sum of Rs. 15,000/- in the name of each blinded undertrial prisoner in the same Bank in which the amount of Rs. 15,000/- from the Prime Minister's Fund has been deposited and this amount is also earning interest. It appears that this amount Rs. 15,000/- which is deposited in the name of each blinded undertrial prisoner by the State Govt. is not lying in a Fixed Deposit and the interest which is earned on this amount would therefore necessarily be small. We would therefore direct that this amount of Rs. 15,000/- also should be invested in Fixed Deposit with the Bank concerned for a period of one year and the interest earned on this amount may be paid to each of the blinded undertrial prisoners in the same manner in which the interest earned on the amount of Rs. 15,000/- deposited out of the Prime Minister's Fund is directed to be paid by us. It appears that Chamak Lal Rai is in need of medical treatment and we would therefore request the Institute where he is going to be admitted to provide the necessary medical treatment to him.

3. Pursuant to the enquiry made by us by our order dated January 21, 1982 Mr. K.G. Bhagat, learned counsel appearing on behalf of the State Govt. states that the State Govt. has no objection to pay allowance to Balwant Singh, father of Baljeet Singh @ Rs. 300/- per month for the period from 18th March, 1981 to October 1, 1981 during which period Baljeet Singh was getting treatment in the All India Institute of Medical Sciences, New Delhi and Balwant Singh had to be with him for looking after him. The State Govt. will deposit the requisite amount with the Registrar of this Court within two weeks from today after taking into account any amount which might have already been paid in this Court and Balwant Singh will be at liberty to withdraw this amount from the Registry of this Court.

4. Mrs. Hingorani appearing on behalf of the petitioners has asked for disclosure of the C.B.I. Report in regard to the investigation carried out by them with a view to fixing the responsibility for the blinding of the undertrial prisoners. The office copy of the C.B.I. Report in two parts has been handed over to the Court on the last occasion and is lying in the custody of the Court. We do not think that it would be desirable at the present moment to order disclosure of the C.B.I. Report since on the basis of the C.B.I. Report prosecution has already been ordered against 40 police officers and Doctors with the sanction of the State Govt. and the C.B.I. is incharge of the prosecution. We are informed that Charge-Sheets are likely to be filed against these police officers and Doctors in a day or two. We are glad that the various orders made by us from time to time have borne fruit and prosecution has been launched against those alleged to be guilty. Our anxiety is only to see that the rule of law is maintained and the cause of justice is indicated. We are happy to note that the prosecution is in the hands of the C.B.I. but even so, since this case is now before us and we are anxious that those guilty of barbarity are brought to book, we consider it our duty to supervise and oversee the conduct of the prosecution in order to ensure that the prosecution is pursued vigorously and the trial is held speedily and effectively. We would first like to know from the C.B.I. before the next hearing of the writ petition the names of the police officers and Doctors who are being prosecuted and we would also direct the C.B.I. to produce before us copies of the Charge-Sheets filed against them as also the names of the witnesses and other particulars furnished by the C.B.I. to the accused in these cases. We shall then consider whether any further directions are necessary to be given by the Court for the speedy disposal of the cases.

SCALE (PIL) 1981-97 1473

RUDUL SAH *Petitioner*

VS

STATE OF BIHAR & ANR. *Respondents*

CORAM: Y.V. CHANDRACHUD, CJI.,
AMARENDRA NATH SEN AND RANGA NATH MISRA, JJ.

PUBLIC INTEREST LITIGATION — WRONGFUL CONFINEMENT/DETENTION — COMPENSATION — CONSTITUTION — ARTICLE 32 — Detention for a period of 14 years even after acquittal — Petitioner claims medical treatment at Government expense, ex-gratia payment for his rehabilitation and compensation for his illegal detention — Court grants as an interim measure in the nature of a palliative a sum of Rs. 30,000/- in addition to the sum of Rs. 5,000/- already paid by the State — Court further observes that this order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials.

Chandrachud, CJI. — This Writ Petition discloses a sordid and disturbing state of affairs. Though the petitioner was acquitted by the Court of Sessions, Muzaffarpur, Bihar, on June 3, 1968 he was released from the jail on October 16, 1982, that is to say, more than 14 years after he was acquitted. By this Habeas Corpus petition, the petitioner asks for his release on the ground that his detention in the jail is unlawful. He has also asked for certain ancilliary reliefs like rehabilitation, reimbursement of expenses which he may incur for medical treatment and compensation for the illegal incarceration.

2. This petition came up before us on November 22, 1982 when we were informed by Shri Goburdhun, counsel for the State of Bihar, that the petitioner was already released from the jail. The relief sought by the petitioner for his release thus became infructuous but despite that, we directed that a Notice to show cause be issued to the State of Bihar regarding prayers 2, 3 and 4 of the petition. By prayer No.2 the petitioner asks for medical treatment at Government expense, by prayer No.3 he asks for an *ex gratia* payment for his rehabilitation, while by prayer No. 4 he asks for compensation for his illegal detention in the jail for over 14 years.

3. We expected a prompt response to the Show Cause Notice from the Bihar Government at least at this late stage, but they offered no explanation for over four months. The writ Petition was listed before us on March 31, 1983 when Shri Goburdhun restated that the petitioner had been already released from the jail. We passed a specific order on that date to the effect that the release of the petitioner cannot be the end of the matter and we called upon the Government of Bihar to submit a written explanation

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Judgment dated August 1, 1983 in Writ Petition (Criminal) No. 1387 of 1983. [1983(2) SCALE 103] supported by an affidavit as to why the petitioner was kept in the jail for over 14 years after his acquittal. On April 16, 1983. Shri Alakh Deo Singh, Jailor, Muzaffarpur Central Jail, filed an affidavit in pursuance of that order. Shorn of its formal recitals, the affidavit reads thus :

> "2. That the petitioner was received on 25.3.67 from Hazaribagh Central Jail and was being produced regularly before the Additional Sessions Judge, Muzaffarpur and on 30.8.68 the learned Judge passed the following order :
>
> "The accused is acquitted but he should be detained in prison till further order of the State Government and I.G. (Prisons), Bihar, (A true copy of the same is attached as Annexure I).
>
> 3. That accused Rudul Sah was of unsound mind at the time of passing the above order. This information was sent to the Law Department in letter No. 1838 dated 10.5.74 of the Superintendent, Central Jail, Muzaffarpur through District Magistrate, Muzaffarpur.
>
> 4. That the Civil Surgeon, Muzaffarpur, reported on 18.2.77 that accused Rudul Sah was normal and this information was communicated to the Law Department on 21.2.77.
>
> 5. That the petitioner, Rudul Sah was treated well in accordance with the rules in the Jail Manual, Bihar, during the period of his detention.
>
> 6. That the petitioner was released on 16.10.82 in compliance with the letter No. 11637 dated 14.10.82 of the Law Department."

4. The Writ Petition came up before us on April 26, 1983 when we adjourned it to the first week of August 1983 since it was not clear either from the affidavit filed by the Jailor or from the order of the learned Additional Sessions Judge, Muzaffarpur, which is annexed to the affidavit as Annexure I, as to what was the basis on which it was stated in the affidavit that the petitioner was of unsound mind or the reason why the learned Additional Sessions Judge directed the detention of the petitioner in jail, until further orders of the State Government and the Inspector General of Prisons.

5. The writ petition has come up for hearing once again before us to-day. If past experience is any guide, no useful purpose is likely to be served by adjourning the petition in the hope that the State authorities will place before us satisfactory material to explain the continued detention of the petitioner in jail after his acquittal. We apprehend that the present state of affairs, in which we are left to guess whether the petitioner was not released from the prison for the benign reason that he was insane, is not likely to improve in the near future.

6. The Jailor's affidavit leaves much to be desired. It narrates with an air of candidness what is notorious, for example, that the petitioner was not released from the jail upon his acquittal and that he was reported to be insane. But it discloses no data on the basis of which he was adjudged insane, the specific measures taken to cure him of that affliction and, what is most important, whether it took 14 years to set right his mental imbalance. No medical opinion is produced in support of the diagnosis that he was insane nor indeed is any jail record produced to show what kind of medical treatment was prescribed for and administered to him and for how long. The letter (No. 1838) dated May 10, 1974 which, according to paragraph 3 of the affidavit, was sent to the Law Department by the Superintendent of the Central Jail, Muzaffarpur, is not produced before us. There is nothing to show that the petitioner was found insane on the very date of his conviction. And, if he was insane when he was convicted, he could neither have been tried nor convicted, for the simple reason that an insane person cannot enter upon his defence. Under the Code of Criminal Procedure, insane persons have certain statutory rights in regard to the procedure governing their trial. According to paragraph 4 of the affidavit, the Civil Surgeon, Muzaffarpur, reported on February 18, 1977 that the petitioner was normal and that this information was communicated to the Law Department on February 21, 1977. Why was the petitioner not released for over 5½ years thereafter? It was on October 14, 1982 that the Law Department of the Government of Bihar directed that the petitioner should be released. Why was the Law Department so insensitive to justice? We are inclined to believe that the story of the petitioner's insanity is an afterthought and is exaggerated out of proportion. If indeed he was insane, at least a skeletal medical record could have been produced to show that he was being treated for insanity. In these circumstances, we are driven to the conclusion that, if at all the petitioner was found insane at any point of time, the insanity must have supervened as a consequence of his unlawful detention in jail. A sense of helplessness and frustration can create despondency and persistent despondency can lead to a kind of mental imbalance.

7. The concerned Department of the Government of Bihar could have afforded to show a little more courtesy to this Court and to display a greater awareness of its responsibilities by asking one of its senior officers to file an affidavit in order to explain the callousness which pervades this case. Instead, the Jailor has been made a scapegoat to own up vicariously the dereliction of duty on the part of the higher officers who ought to have known better. This is not an isolated case of its kind and we feel concerned that there is darkness all around in the prison administration of the State of Bihar. The Bhagalpur blindings should have opened the eyes of the Prison Administration of the State. But that bizarre episode has taught no lesson and has failed to evoke any response in the Augean Stables. Perhaps, a Hercules has to be found who will clean them by diverting two rivers through them, not the holy Ganga though. We hope (and pray) that the higher officials of the State will find time to devote their personal attention to the breakdown of Prison Administration in the State and rectify the grave injustice which is being perpetrated on helpless persons. The High Court of Patna should itself examine this matter and call for statistical data from the Home Department of the Government of Bihar on the question of unlawful detentions in the State Jails. A tabular statement from each jail should be called for, disclosing how many convicts have been in jail for more than 10 years, 12 years, 14 years and for over 16 years. The High Court will then be in a position to release prisoners who are in unlawful detention in the jails and to ask the State Government to take steps for their rehabilitation by payment of adequate compensation wherever necessary.

8. That takes us to the question as to how the grave injustice which has been perpetrated upon the petitioner can be rectified, in so far as it lies within our power to do in the exercise of our writ Jurisdiction under Article 32 of the Constitution. That article confers power on the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is "guaranteed", that is to say, the right to move the Supreme Court under Article 32 for the enforcement of any of the rights conferred by Part III of the Constitution is itself a fundamental right.

9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full-dressed trial. He filed a Habeas Corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas Corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised,file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulet its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the *State* must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000/- (Rupees thirty-thousand) in addition to the sum of Rs. 5,000/- (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent.

12. This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of facts and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudul Sahs in Bihar or elsewhere.

SCALE (PIL) 1981-97 1477
SEBASTIAN M. HONGRAY *Petitioner*
VS
UNION OF INDIA *Respondent*
CORAM: D.A. DESAI AND O. CHINNAPPA REDDY, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 32 — HABEAS CORPUS — Court issued writ — Failure to produce persons — Held,

A. In compliance with the mandatory direction contained in the writ of habeas corpus, the person to whom it is directed is under a legal obligation to produce the body of the person alleged to be unlawfully detained before the Court on the day specified and to make a formal return to the writ. (Para 2)

B. Wilful disobedience to a writ issued by the Court constitutes civil contempt. (Para 4).

C. Mere failure to obey the writ may not constitute civil contempt depending upon the facts and circumstances of the case. But wilful disobedience to a writ issued by a Court constitutes civil contempt. (Para 4).

D. Civil Contempt is punishable with imprisonment as well as fine. In a given case, the Court may also penalise the party in contempt by ordering him to pay the costs of the application. A fine can also be imposed upon the contemnor. (Para 6).

E. The Court in the instant case, did not impose imprisonment or fine, but awarded exemplary Costs. (Para 7).

F. Court directed that all papers of the case accompanied by a writ of mandamus to the Superintendent of Police, Ukhrul, Manipur State to be treated as information of a cognizable offence and to commence investigation as prescribed by the relevant provisions of the Code of Criminal Procedure. (Para 8).

Desai, J.— On Nov. 24, 1983 the Court by its judgment and order directed that a writ of habeas corpus be issued. The operative portion of the order reads as under:

> "Accordingly, this petition is allowed and we direct that a writ of habeas corpus be issued to the respondents 1, 2 and 4 commanding them to produce C. Daniel, retired Naik Subedar of Manipur Riffles and Headmaster of the Junior High School of Huining Village and C. Paul, Assistant Pastor of Huining Baptist Church, who were taken to Phungrei Camp by the jawans of 21st Sikh Regiment on March 10, 1982 before this Court on Dec. 12, 1983 and file the return."

The Registry issued the writ and served the same upon first respondent-Union of India, second respondent-Secretary, Ministry of Home Affairs and 4th respondent-

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Judgment dated April 23, 1983 in W.P. (Crl.) No. 148 of 1983. [1984(1) SCALE 629]

Commandant, 21st Sikh Regiment, Phungrei Camp. Pursuant to the writ, it was obligatory upon respondents 1, 2 and 4 to file the return and to produce C. Daniel and C. Paul. A return on affidavit by one Ajai Vikram Singh, Director, Ministry of Defence dated December 9, 1983 was produced in the Court on December 12, 1983 stating therein "that with all the will and the best efforts, the respondents are unable to produce S/Shri C. Danial and C. Paul for the reasons set out in the affidavit and crave for indulgence of the Hon'ble Court for their inability to produce the above-named individuals due to circumstances beyond their control." It was reiterated that C. Daniel and C. Paul were not in the custody or control of respondents 1, 2 and 4. To this return several affidavits and messages were annexed saying that the Army Authorities conducted an extensive search for tracing C. Daniel and C. Paul but nothing fruitful has been achieved. On Surendra Kumar, Deputy Secretary, Ministry of Home Affairs had also filed the return stating that C. Daniel and C. Paul are neither in the custody or control of respondent No. 2. It was stated that Central Bureau of Investigation (CBI for short) have been directed to conduct enquiries to locate the aforementioned two persons and to intimate the result thereof. The matter was adjourned to enable the respondents to pursue their efforts. Nothing fruitful came up even though the matter was twice adjourned at the request of learned Attorney General who entered appearance on behalf of respondents Nos. 1, 2 and 4. The writ petition was posted for further hearing and orders on April 19, 1984. On that day, a summary of enquiry made by CBI was submitted to the Court in which it was stated that `the field enquiries made by the CBI and the efforts made to locate the two persons have yielded no results and it has not been possible to locate Sri Daniel and Sri Paul'. The report was submitted by the Dy. Inspector General of Police (S).

2. It is now necessary to deal with the failure of respondents 1, 2 and 4 to file the return to the writ of habeas corpus. After a preliminary enquiry and after hearing the respondents and after negativing their contentions that Shri C. Daniel and Shri C. Paul were not seen last alive in the custody of the 4th respondent, the Court directed to issue a writ of habeas corpus. The writ of habeas corpus was issued and was served on respondents 1, 2 and 4. In compliance with the mandatory direction contained in the writ of habeas corpus, the person to whom it is directed is under a legal obligation to produce the body of the person alleged to be unlawfully detained before the Court on the day specified and to make a formal return to the writ.[1] Such a writ has been issued and there has been failure to produce the missing persons in respect of whom writ is issued and to file the return as mandated by law.

3. The next question therefore, is : what is the appropriate mode of enforcing obedience to a writ of habeas corpus?

4. The Contempt of Courts Act, 1971 defines 'contempt of court' in Sec. 2(a) to mean 'civil contempt or criminal contempt'. 'Civil contempt' is defined in Sec. 2(b) to mean 'wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.' Wilful disobedience to a writ issued by the Court constitutes civil contempt. The question is: whether this disobedience is wilful? Mere failure to obey the writ may not constitute civil contempt depending upon the facts and circumstances of the case. But wilful disobedience to a writ issued by a Court constitutes civil contempt. Again it is well-settled that 'the appropriate mode of enforcing obedience to a writ of habeas corpus is by committal for contempt.

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(1) (Halsbury's Laws of England, Fourth Edition, Vol. II para 1492 at page 791).

A committal order may be made against a person who intentionally makes a false return to a writ of habeas corpus, but an unintentional misrepresentation on a return is not a ground for committal."[2]

5. The view of this Court as expressed in the main judgment clearly indicates that the assertion of respondents 1, 2 and 4 that C. Daniel and C. Paul left Phungrei Camp where 21st Sikh Regiment were stationed is not correct and that to avoid responsibility flowing from the mysterious disappearance of C. Daniel and C. Paul an attempt was made to suggest that they had left alive in the company of their compatriots. The Court has rejected this submission as untenable and incorrect. On that conclusion one can say that there is a wilful disobedience to the writ of habeas corpus by misleading the court by presenting a distorted version of facts not borne out by the record. It is thus established that the respondents 1, 2 and 4 have committed civil contempt by their wilful disobedience to the writ.

6. Civil contempt is punishable with imprisonment as well as fine. In a given case, the court may also penalise the party in contempt by ordering him to pay the costs of the application[3]. A fine can also be imposed upon the contemnor.

7. Now in the facts and circumstances of the case, we do not propose to impose imprisonment nor any amount as and by way of fine but keeping in view the torture, the agony and the mental oppression through which Mrs. C. Thingkhuila, wife of Shri C. Daniel and Mrs. C. Vangamla, wife of Shri C. Paul had to pass and they being the proper applicants, the formal application being by Sebastian M. Hongray, we direct that as a measure of exemplary costs as is permissible in such cases, respondents Nos. 1 and 2 shall pay Rs. 1 lac to each of the aforementioned two women within a period of four weeks from today.

8. A query was posed to the learned Attorney General about the further step to be taken. It was made clear that further adjourning the matter to enable the respondents to trace or locate the two missing persons is to shut the eyes to the reality and to pursue a mirage. As we are inclined to direct registration of an offence and an investigation, we express no opinion as to what fate has befallen to Shri C. Daniel and Shri C. Paul, the missing two persons in respect of whom the writ of habeas corpus was issued save and except saying that they have not met their tragic end in an encounter as is usually claimed and the only possible inference that can be drawn from circumstance already discussed is that both of them must have met an unnatural death. Prima facie, it would be an offence of murder. Who is individually or collectively the purpetrator of the crime or is responsible for their disappearance will have to be determined by a proper, thorough and responsible police investigation. It is not necessary to start casting a doubt on anyone or any particular person. But prima facie there is material on record to reach an affirmative conclusion that both Shri C. Daniel and Shri C. Paul are not alive and have met an unnatural death. And the Union of India cannot disown the responsibility in this behalf. If this inference is permissible which we consider reasonable in the facts and circumstances of the case, we direct that the Registrar (Judicial) shall forward all the papers of the case accompanied by a writ of mandamus to the Superintendent of Police, Ukhrul, Manipur State to be treated as information of a cognizable offence and to commence investigation as prescribed by the relevant provisions of the Code of Criminal Procedure.

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[2] (ibid para 1497).

[3] (Halsbury's Laws of England, Fourth Edition. Vol. 9 para 100 at p. 61).

SCALE (PIL) 1981-97 1480

OLGA TELLIS & ORS. *Petitioners*

VS

BOMBAY MUNICIPAL CORPORATION & ORS. *Respondents*

CORAM: Y.V. CHANDRACHUD, CJI., S. MURTAZA FAZAL ALI,
V.D. TULZAPURKAR, O. CHINNAPPA REDDY AND A. VARADARAJAN, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 19 & 21 — Pavement and Slum Dwellers in Bombay — Disposing of the petitions with directions, Held,

A. No person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or ear-marked for a public purpose.

Referred: Baksey vs Board of Regents, 347 M.D. 442 (1954); Basheshar Nath vs The Commissioner of Income Tax Delhi, (1959) Supp. 1 SCR 528; Smt. Ujjam Bai vs State of Uttar Pradesh, (1963) 1 SCR 778; Naresh Shridhar Mirajkar vs State of Maharashtra (1966) 3 SCR 744-770; Munn vs Illinois (1877) 94 US 113; Kharak Singh vs The State of U.P. (1964) 1 SCR 332; In Re: Sant Ram, (1960) 3 SCR 499; E.P. Royappa vs State of Tamil Nadu, (1974) 2 SCR 348; Maneka Gandhi vs Union of India, (1978) 2 SCR 621; M.O. Hoscot vs State of Maharashtra, (1979) 1 SCR 192; Sunil Batra I vs Delhi Administration, (1979) 1 SCR 392; Sita Ram vs State of U.P., (1979) 2 SCR 1085; Hussainara Khatoon I vs Home Secretary, State of Bihar, Patna, (1979) 3 SCR 532, 537; Hussainara Khatoon II vs Home Secretary, State of Bihar, Patna, (1980) 1 SCC 81; Sunil Batra II vs Delhi Administration, (1980) 2 SCR 557; Jolly George Verghese vs The Bank of Cochin, (1980) 2 SCR 913, 921-922; Kasturi Lal Lakshmi Reddy vs State of Jammu & Kashmir, (1980) 3 SCR 1338, 1356; Francis Coralie Mullin vs The Administrator, Union Territory of Delhi, (1981) 2 SCR 516, 523-524; Ramana Dayaram Shetty vs The International Airport Authority of India, (1979) 3 SCR 1014, 1032; Hickman vs Maiesy, (1900) 1 Q.B. 752; S.L. Kapoor vs Jagmohan, (1981) 1 SCR 746, 766; Ridge vs Baldwin, (1964) AC 40 at 68; John vs Rees, (1970) 1 Chancery 345 at 402; Annamunthodo vs Oilfields Workers' Trade Union, (1961) 3 All E.R. 621 (H.L.) at 625; Margarita Fuentes at al. vs Tobert L. Shevin, 32 L.Ed. 2d 556 at 574; Chintepalli Agency Taluk Arrack Sales Cooperative Society Ltd. vs Secretary (Food & Agriculture) Government of Andhra Pradesh, (1978) 1 SCR 563.

Chandrachud, CJI.— These Writ Petitions portray the plight of lakhs of persons who live on pavements and in slums in the city of Bombay. They constitute nearly half the population of the city. The first group of petitions relates to pavement dwellers while the second group relates to both pavement and Basti or Slum dwellers. Those who have made pavements their homes exist in the midst of filth and squalor, which has to be seen to be believed. Rabid dogs in search of stinking meat and cats in search of hungry rats keep them company. They cook and sleep where they ease, for no conveniences are available to them. Their daughters, come of age, bathe under the nosy gaze of passers by, unmindful of the feminine sense of bashfulness. The cooking and washing over, women pick lice from each other's hair. The boys beg. Menfolk, without occupation, snatch chains with the connivance of the defenders of law and order; when caught, if at all, they say :

Judgment dated July 10, 1985 in W.P. Nos. 4610-12 of 1981 and W.P. Nos. 5068-79 of 1981 (V. Kuppusami v Maharashtra). [1985(2) SCALE 5]

"Who doesn't commit crimes in this city?"

2. It is these men and women who have come to this Court to ask for a judgment that they cannot be evicted from their squalid shelters without being offered alternative accommodation. They rely for their rights on Article 21 of the Constitution which guarantees that no person shall be deprived of his life except according to procedure established by law. They do not contend that they have a right to live on the pavements. Their contention is that they have a right to live a right which cannot be exercised without the means of livelihood. They have no option but to flock to big cities like Bombay, which provide the means of bare subsistence. They only choose a pavement or a slum which is nearest to their place of work. In a word, their plea is that the right to life is illusory without a right to the protection of the means by which alone life can be lived. And, the right to life can only be taken away or abridged by a procedure established by law, which has to be fair and reasonable, not fanciful or arbitrary such as is prescribed by the Bombay Municipal Corporation Act or the Bombay Police Act. They also rely upon their right to reside and settle in any part of the country which is guaranteed by Article 19(1)(e).

3. The three petitioners in the group of Writ Petitions 4610-4612 of 1981 are a journalist and two pavement dwellers. One of these two pavement dwellers, P. Angamuthu, migrate from Salem, Tamil Nadu, to Bombay in the year 1961 in search of employment. He was a landless labourer in his home town but he was rendered jobless becauses of drought. He found a job in a chemical company at Dahisar, Bombay, on a daily wage of Rs. 23/- per day. A slum-lord extorted a sum of Rs. 2,500/- from him in exchange of a shelter of plastic sheets and canvas on a pavement on the Western Express Highway, Bombay. He lives in it with his wife and three daughters who are 16, 13 and 5 years of age.

4. The second of the two pavement dwellers came to Bombay in 1969 from Sangamner, District Ahmednagar, Maharashtra. He was a cobbler earning 7 to 8 rupees a day, but his so-called house in the village fell down. He got employment in Bombay as a Badli Kamgar for Rs. 350/- per month. He was lucky in being able to obtain a "dwelling house" on a pavement at Tulsiwadi by paying Rs. 300/- to a goonda of the locality. The bamboos and the plastic sheets cost him Rs. 700/-.

5. On July 13, 1981 the then Chief Minister of Maharashtra, Shri A.R. Antulay, made an announcement which was given wide publicity by the newspapers that, all pavement dwellers in the city of Bombay will be evicted forcibly and deported to their respective places of origin or removed to places outside the city of Bombay. The Chief Minister directed the Commissioner of Police to provide the necessary assistance to respondent 1, the Bombay Municipal Corporation, to demolish the pavement dwellings and deport the pavement dwellers. The apparent justification which the Chief Minister gave to his announcement was : "It is a very inhuman existence. These structures are flimsy and open to the elements. During the monsoon there is no way these people can live comfortably."

6. On July 23, 1981 the pavement dwelling of P. Angamuthu was demolished by the officers of the Bombay Municipal Corporation. He and the members of his family were put in a bus for Salem. His wife and daughters stayed back in Salam but he returned to Bombay in search of a job and got into a pavement house once again. The dwelling of the other petitioner was demolished even earlier, in January 1980 but he rebuilt it. It is like a game of hide and seek. The Corporation removes the ramshackle shelters on the pavements with the aid of police, the pavement dwellers flee to less conspicuous pavement in by-lanes and, when the officials are gone, they return to their old habitats. Their main attachment to those places is the nearness thereof to their place of work.

7. In the other batch of writ petitions Nos. 5068-79 of 1981, which was heard along with the petitions relating to pavement dwellers, there are 12 petitioners. The first five of these are residents of Kamraj Nagar, a basti or habitation which is alleged to have come into existence in about 1960-61, near the Western Express Highway, Bombay. The next four petitioners were residing in structures constructed off the Tulsi Pipe Road, Mahim, Bombay. Petitioner No. 10 is the Peoples' Union of Civil Liberties, petitioner No. 11 is the Committee for the protection of Democratic Rights while petitioner No. 12 is a journalist.

8. The case of the petitioners in the Kamraj Nagar group of cases is that there are over 500 hutments in this particular basti, which was built in about 1960 by persons who were employed by a construction company engaged in laying water pipes along the Western Express Highway. The residents of Kamraj Nagar are municipal employees, factory or hotel workers, construction supervisors and so on. The residents of the Tulsi Pipe Road hutments claim that they have been living there for 10 to 15 years and that, they are engaged in various small trades. On hearing about the Chief Minister's announcement, they filed a writ petition in the High Court of Bombay for an order of injunction restraining the officers of the State Government and the Bombay Municipal Corporation from implementing the directive of the Chief Minister. The High Court granted an ad-interim injunction to be in force until July 21, 1981. On that date, respondents agreed that the huts will not be demolished until October 15, 1981. However, it is alleged, on July 23, 1981 the petitioners were huddled into State Transport buses for being deported out of Bombay. Two infants were born during the deportation but that was set off by the death of two others.

9. The decision of the respondents to demolish the huts is challenged by the petitioners on the ground that it is violative of Articles 19 and 21 of the Constitution. The petitioners also ask for a declaration that the provisions of sections 312, 313 and 314 of the Bombay Municipal Corporation Act, 1888 are invalid as violating Articles 14, 19 and 21 of the Constitution. The reliefs asked for in the two groups of writ petitions are that the respondents should be directed to withdraw the decision to demolish the pavement dwellings and the slum hutments and, where they are already demolished, to restore possession of the sites to the former occupants.

10. On behalf of the Government of Maharashtra, a counter-affidavit has been filed by V.S. Munje, Under Secretary in the Department of Housing. The counter-affidavit meets the case of the petitioners thus. The Government of Maharashtra neither proposed to deport any pavement dweller out of the city of Bombay nor did it, in fact, deport anyone. Such of the pavement dwellers, who expressed their desire in writing,that they wanted to return to their home towns and who sought assistance from the Government in that behalf were offered transport facilities up to the nearest rail head and were also paid railway fare or bus fare and incidental expenses for the onward journey. The Government of Maharashtra had issued instructions to its officers to visit specific pavement on July 23, 1981 and to ensure that no harassment was caused to any pavement dweller. Out of 10,000 hutment-dweller who were likely to be effected by the proposed demolition of hutments constructed on the pavements, only 1024 persons opted to avail of the transport facility and the payment of incidental expenses.

11. The counter-affidavit says that no person has any legal right to encroach upon or to construct any structure on a foot-path, public street or any place over which the public has a right of way. Numerous hazards of health and safety arise if action is not taken to remove such encroachments. Since, no civic amenities can be provided on the pavements, the pavement dwellers use pavements or adjoining streets for easing themselves. Apart from this, some of the pavements dwellers indulge in anti-social acts like chain-snatching, illicit distillation of liquor and prostitution. The lack of proper environment leads to increased criminal tendencies, resulting in more crime in the cities. It is, therefore, in public interest that public places like pavements and paths are not encroached upon. The Government of Maharashtra provides housing assistance to the weaker sections of the society like landless labourers and persons belonging to low income groups, within the framework of its planned policy of the economic and social development of the State. Any allocation for housing has to be made after balancing the conflicting demands from various priority sectors. The paucity of resources is a restraining factor on the ability of the State to deal effectively with the question of providing housing to the weaker sections of the society. The Government of Maharashtra has issued policy directives that 75 per cent of the housing programme should be allocated to the lower income groups and the weaker sections of the society. One of the objects of the State's planning policy is to ensure that the influx of population from the rural to the urban areas is reduced in the interest of a proper and balanced social and economic development of the State and of the country. This is proposed to be achieved by reversing the rate of growth of metropolitan cities and by increasing the rate of growth of small and medium towns. The State Government has therefore devised an Employment Guarantee Scheme to enable the rural population, which remains unemployed or underemployed at certain periods of the year, to get employment during such periods. A sum of Rs. 180 crores was spent on that scheme during the years 1979-80 and 1980-81. On October 2, 1980 the State Government launched two additional schemes for providing employment opportunities for those who cannot get work due to old age or physical infirmities. The State Government has also launched a scheme for providing self-employment opportunities under the 'Sanjay Gandhi Niradhar Anudan Yojana'. A monthly pension of Rs. 60/- is paid to those who are too old to work or are physically handicapped. In this scheme, about 1,56,943 persons have been identified and a sum of Rs. 2.25 crores was disbursed. Under another scheme called 'Sanjay Gandhi Swawalamban Yojana', interest-free loans, subject to a maximum of Rs. 2,500/-, were being given to persons desiring to engage themselves in gainful employment of their own. About 1,75,000 persons had benefitted under this scheme, to whom a total sum of Rs. 5.82 crores was disbursed by way of loan. In short, the objective of the State Government was to place greater emphasis on providing infrastructural facilities to small and medium towns and to equip them so that they could act as growth and service centres for the rural hinterland. The phenomenon of poverty which is common to all developing countries has to be tackled on an All India basis by making the gains of development available to all sections of the society through a policy of equitable distribution of income and wealth. Urbanisation is a major problem facing entire country, the migration of people from the rural to the urban areas being a reflection of the colosal poverty existing in the rural areas. The rural poverty cannot, however, be eliminated by increasing the pressure of population on metropolitan cities like Bombay. The problem of poverty has to be tackled by changing the structure of the society in which there will be a more equitable distribution of income and greater generation of wealth. The State Government has stepped up the rate of construction of tenements for the weaker sections of the society from 2500 to 9500 per annum.

12. It is denied in the counter-affidavit that the provisions of section 312, 313 and 314 of the Bombay Municipal Corporation Act violate the Constitution. Those provisions are conceived in public interest and great care is taken by the authorities to ensure that no harassment is caused to any pavement dweller while enforcing the provision of those sections. The decision to remove such encroachments was taken by the Government with specific instructions that every reasonable precaution ought to be taken to cause the least possible inconvenience to the pavement dwellers. What is more important, so the counter-affidavit says, the Government of Maharashtra had decided that, on the basis of the census carried out in 1976, pavement dwellers who would be uprooted should be offered alternate developed pitches at Malvani where they could construct their own hutments. According to that census, about 2,500 pavement hutments only were then in existence.

13. The counter-affidavit of the State Government describes the various steps taken by the Central Government under the Five Year Plan of 1978-83, in regard to the housing programmes. The plan shows that the inadequacies of Housing policies in India have both quantitative and qualitative dimensions. The total investment in housing shall have to be of the magnitude of Rs. 2790 crores, if the housing problem has to be tackled even partially.

14. On behalf of the Bombay Municipal Corporation, a counter-affidavit has been filed by Shri D.M. Sukthankar, Municipal Commissioner of Greater Bombay. That affidavit shows that he had visited the pavements on the Tulsi Pipe Road (Senapati Bapat Marg) and the Western Express High Way, Vile Parle (East), Bombay. On July 23, 1981, certain hutments on these pavements were demolished under section 314 of the Bombay Municipal Corporation Act. No prior notice of demolition was given since the section does not provide for such notice. The affidavit denies that the intense speculation in land prices, as alleged, owes its origin to the High rise buildings which have come up in the city of Bombay. It is also denied that there are vast vacant pieces of land in the city which can be utilised for housing the pavement dwellers. Section 61 of the B.M.C. Act lays down the obligatory duties of the Corporation. Under clauses (c) and (d) of the said section, it is the duty of the Corporation to remove exetrementitious matters, refuse and rubbish and to take measures for abatement of every kind of nuisance. Under clause (g) of that section, the Corporation is under an obligation to take measures for preventing and checking the spread of dangerous diseases. Under clause (o), obstructions and projections in or upon public streets and other public places have to be removed. Section 63(k) empowers the Corporation to take measures to promote public safety, health or convenience, not specifically provided otherwise. The object of Sections 312 to 314 is to keep the pavements and foot paths free from encroachment so that the pedestrians do not have to make use of the streets on which there is heavy vehicular traffic. The pavement dwellers answer the nature's call, bath, cook and wash their clothes and utensils on the foot-paths and on parts of public streets adjoining the foot-paths. Their encroachment creates serious impediments in repairing the roads, foot-paths and drains. The refusal to allow the petitioners and other persons similarly situated to use foot-paths as their abodes is, therefore, not unreasonable, unfair, or unlawful. The basic civic amenities, such as drainage, water and sanitation, cannot possibly be provided to the pavements dwellers. Since the pavements are encroached upon, pedestrians are compelled to walk on the streets, thereby increasing the risk of traffic accidents and impeding the free flow of vehicular movement. The Municipal Commissioner disputes in his counter-affidavit that any fundamental right of the petitioners is infringed by removal of the encroachment committed by them on public property, especially the pavements. In this behalf reliance is placed upon an order dated July 27, 1981 of Lentin J. of the Bombay High Court, which records that counsel for the petitioners had stated expressly on July 24, 1981, that no fundamental right could be claimed to put up a dwelling on public foot-paths and public roads.

15. The Municipal Commissioner has stated in his counter-affidavit in Writ Petitions 5068-79 of 1981 that the huts near the Western Express Highway, Vile Parle, Bombay, were constructed on an accessory road which is a part of the Highway itself. These hutments were never regularised by the Corporation and no registration numbers were assigned to them.

16. In answer to the Municipal Commissioner's counter-affidavit, petitioner No. 12, Prafullachandra Bidwai who is a journalist, has filed a rejoinder asserting that Kamraj Nagar is not located on a foot-path or a pavement. According to him, Kamraj Nagar is a basti off the Highway, in which the huts are numbered, the record in relation to which is maintained by the Road Development Department and the Bombay Municipal Corporation. Contending that petitioners 1 to 5 have been residing in the said basti for over 20 years, he reiterates that the public has no right of way in or over the Kamraj Nagar. He also disputes that the huts on the foot-paths cause any obstruction to the pedestrians or to the vehicular traffic or that those huts are a source of nuisance or danger to public health and safety. His case in paragraph 21 of his reply-affidavit seems to be that since, the footpaths are in the occupation of pavement dwellers for a long time, foot-paths have ceased to be foot-paths. He says that the pavement dwellers and the slum or basti dwellers, who number about 47.7 lakhs, constitute about 50 per cent of the total population of Greater Bombay, that they supply the major work force for Bombay from menial jobs to the most highly skilled jobs, that they have been living in the hutments for generations, that they have been making a significant contribution to the economic life of the city and that, therefore, it is unfair and unreasonable on the part of the State Government and the Municipal Corporation to destroy their homes and deport them: A home is a home wherever it is. The main them of the reply-affidavit is that "The slum dwellers are the *sine qua non* of the city. They are entitled to a *quid pro quo.*" It is conceded expressly that the petitioners do not claim any fundamental right to live on the pavement. The right claimed by them is the right to live, at least to exist.

17. Only two more pleadings need be referred to, one of which is an affidavit of Shri Anil V. Gokak, Administrator of Maharashtra Housing and Area Development Authority, Bombay, who was then holding charge of the post of Secretary, Department of Housing. He filed an affidavit in answer to an application for the modification of an interim order which was passed by this Court on October 19, 1981. He says that the legislature of Maharashtra had passed the

Maharashtra Vacant Lands (Prohibition of unauthorised Occupation and Summary Eviction) Act, 1975 in pursuance of which the Government had decided to compile a list of slums which were required to be removed in public interest. It was also decided that after a spot inspection, 500 acres of vacant land in and near the Bombay Suburban District should be allocated for re-settlement of the hutment dwellers who were removed from the slums. A Task Force was constituted by the Government for the purpose of carrying out a census of the hutments standing on lands belonging to the Government of Maharashtra, the Bombay Municipal Corporation and the Bombay Housing Board. A census was, accordingly, carried, out on January 4, 1976 by deploying about 7,000 persons to enumerate the slum dwellers spread over approximately 850 colonies all over Bombay. About 67 per cent of the hutment dwellers from a total of about 2,60,000 hutments produced photographs of the heads of their families, on the basis of which hutments were numbered and their occupants were given identity cards. It was decided that slums which were in existence far a long time and which were improved and developed would not normally be demolished unless the land was required for a public purpose. In the event that the land was so required, the policy of the State Government was to provide alternative accommodation to the slum dwellers who were censused and possessed identity cards. This is borne out by a circular of the Government dated February 4, 1976 (No. SIS 1176/D. 41). Shri Gokak says that the State Government has issued instructions directing, *inter alia,* that "action to remove the slums excepting those which are on the foot-paths or roads or which are new or casually located should not, therefore, be taken without obtaining approval from the Government to the proposal for the removal of such slums and their rehabilitation". Since, it was never the policy of the Government to encourage construction of hutments on foot-paths, pavements or other places over which the public has a right of way, no census of such hutments was ever intended to be conducted. But, sometime in July 1981, when the Government officers made an effort to ascertain the magnitude of the problem of evicting pavement dwellers, it was discovered that some persons occupying pavements carried census cards of 1976. The Government then decided to allot pitches to such occupants of pavements.

18. The only other pleading which deserves to be noticed is the affidavit of the journalist petitioner, Ms. Olga Tellis, in reply to the counter-affidavit of the Government of Maharashtra. According to her, one of the important reasons of the emergence and growth of squatter-settlements in the Metropolitan cities in India is, that the Development and Master Plans of most of the cities have not been adhered to. The density of population in the Bombay Metropolitan Region is high according to the Town Planning standards; Difficulties are caused by the fact that the population is not evenly distributed over the region, in a planned manner. New construction of commercial premises, small-scale industries and entertainment houses in the heart of the city, have been permitted by the Government of Maharashtra contrary to law and even residential premises have been allowed to be converted into commercial premises. This, coupled with the fact that the State Government has not shifted its main offices to the northern region of the city, has led to the concentration of the population in the southern region due to the availability of job opportunities in that region. Unless economic and leisure activity is decentralised, it would be impossible to find a solution to the problems arising out of the growth of squatter colonies. Even if squatters are evicted, they

come back to the city because, it is there that job opportunities are available. The alternate pitches provided to the displaced pavement-dwellers on the basis of the so-called 1976 census, are not an effective means to their resettlement because, those sites are situated far away from the Malad Railway Station involving cost and time which are beyond their means. There are no facilities available at Malavani like schools and hospitals, which drives them back to the stranglehold of the city. The permission granted to the 'National Centre of Performing Arts' to construct an auditorium at the Nariman Point, Backbay Reclamation, is cited as a 'gross' instance of the short-sighted, suicidal and discriminatory policy of the Government of Maharashtra. It is as if the sea is reclaimed for the construction of business and entertainment houses in the centre of the city, which creates job opportunities to which the homeless flock. They work therein and live on pavements. The grievance is that, as a result of this imbalance, there are not enough jobs available in the northern tip to the city. The improvement of living conditions in the slums and the regional distribution of job opportunities are the only viable remedies for relieving congestion of the population in the centre of the city. The increase allowed by the State Government in the Floor Space Index over and above 1.33, has led to a further concentration of population in the centre of the city.

19. In the matter of housing, according to Ms. Tellis' affidavit, Government has not put to the best use the finances and resources available to it. There is a wide gap between the demand and supply in the area of housing which was in the neighbourhood of forty five thousand units in the decade 1971-81. A huge amount of hundreds of crores of rupees shall have to be found by the State Government every year during the period of the Sixth Plan if adequate provision for housing is at all to be made. The Urban Land Ceiling Act has not achieved its desired objective nor has it been properly implemented. The employment schemes of the State Government are like a drop in the ocean and no steps are taken for increasing job opportunities in the rural sector. The neglect of health, education, transport and communication in that sector drives the rural folk to the cities, not only in search of a living but in search of the basic amenities of life. The allegation of the State Government regarding the criminal propensities of the pavement dwellers is stoutly denied in the reply-affidavit and it is said to be contrary to the studies of many experts. Finally, it is stated that it is no longer the objective of the Sixth Plan to reverse the rate of growth of metropolitan cities. The objective of the earlier plan (1978-83) has undergone a significant change and the target now is to ensure the growth of large metropolitan cities in a planned manner. The affidavit claims that there is adequate land in the Bombay metropolitan region to absorb a population of 20 million people, which is expected to be reached by the year 2000 A.D.

20. The arguments advanced before us by Ms. Indira Jaising, Mr. V.M. Tarkunde and Mr. Ram Jethmalani cover a wide range but the main thrust of the petitioners' case is that evicting a pavement dweller or slum dweller from his habitat amounts to depriving him of his right to livelihood, which is comprehended in the right guaranteed by Article 21 of the Constitution that no person shall be deprived of his life except according to procedure established by law. The question of the guarantee of personal liberty contained in Article 21 does not arise and was not raised before us. Counsel for the petitioners contended that the Court must determine in these petitions the content of the right to life, the function of property in a welfare state, the dimension and true meaning of the constitutional mandate that property must subserve common good, the sweep of the right to reside and settle in any part of the territory of India which is guaranteed by Article 19(1)(e) and the right to carry on any occupation, trade or business which is guaranteed by Article 19(1)(g), the competing claims of pavement dwellers on the one hand and of the pedestrains on the other and, the larger question of ensuring equality before the law. It is contended that it is the responsibility of the courts to reduce inequalities and social imbalances by striking down statutes which perpetuate them. One of the grievance of the petitioners against the Bombay Municipal Corporation Act, 1888 is that it is a century old antiquated piece of legislation passed in an era when pavement dwellers and slum dwellers did not exist and the consciousness of the modern notion of a welfare state was not present to the mind of the colonial legislature. According to the petitioners, connected with these issues and yet independent of them, is the question of the role of the Court in setting the tone of values in a democratic society.

21. The argument which bears on the provisions of Article 21 is elaborated by saying that the eviction of pavement and slum dwellers will lead, in a vicious circle, to the deprivation of their employment, their livelihood and, therefore, to the right to life. Our attention is drawn in this behalf to an extract from the judgment of Douglas J. in *Baksey v Board of Regents*, 347 M.D. 442 (1954). in which the learned Judge said :

> "The right to work I have assumed was the most precious liberty that man possesses. Man has indeed, as much right to work as he has to live, to be free and to own property. To work means to eat and it also means to live."

The right to live and the right to work are integrated and inter-dependant and, therefore, if a person is deprived of his job as a result of his eviction from a slum or a pavement, his very right to life is put in jeopardy. It is urged that the economic compulsions under which these persons are forced to live in slums or on pavements impart to their occupation the character of a fundamental right.

22. It is further urged by the petitioners that it is constitutionally impermissible to characterise the pavement dwellers as "trespassers" because, their occupation of pavements arises from economic compulsions. The State is under an obligation to provide to the citizens the necessities of life and, in appropriate cases, the courts have the power to issue orders directing the State, by affirmative action, to promote and protect the right to life. The instant situation is one of crisis, which compels the use of public property for the purpose of survival and sustenance. Social commitment is the quintessence of our Constitution which defines the conditions under which liberty has to be enjoyed and justice has to be administered. Therefore, Directive Principles, which are fundamental in the governance of the country, must serve as a beacon light to the interpretation of the Constitutional provisions. Viewed in this context, it is urged, the impugned action of the State Government and the Bombay Municipal Corporation is violative of the provisions contained in Articles 19 (1) (e), 19(1)(g) and 21 of the Constitution. The paucity of financial resources of the State is no excuse for defeating the fundamental rights of the citizens.

23. In support of this argument, reliance is placed by the petitioners on what described as the 'factual context'. A publication dated January 1982 of the Planning Commission, Government of India namely, 'The Report of the Expert Group of Programmes for the Alleviation of Poverty', is relied on as showing the high incidence of poverty in India. That Report shows that in 1977-78, 48% of the population lived below the poverty line, which means that out of a population of

303 million who lived below the poverty line, 252 million belonged to the rural areas. In 1979-80 another 8 million people from the rural areas were found to live below the poverty line. A Government of Maharashtra Publication "Budget and the New 20 Point Socio-Economic Programme" estimates that there are about 45 lakh families in rural areas of Maharashtra who live below the poverty line. Another 40% was in the periphery of that area. One of the major causes of the persistent rural poverty of landless labourers, marginal farmers, shepherds, physically handicapped persons and others is the extremely narrow base of production available to the majority of the rural population. The average agricultural holding of a farmer is 0.4 hectares, which is hardly adequate to enable him to make both ends meet. Landless labourers have no resource base at all and they constitute the hardcore of poverty. Due to economic pressures and lack of employment opportunities, the rural population is forced to migrate to urban areas in search of employment. 'The Economic Survey of Maharashtra' published by the State Government shows that the bulk of public investment was made in the cities of Bombay, Pune and Thane, which created employment opportunities attracting the starving rural population to those cities. The slum census conducted by the Government of Maharashtra in 1976 shows that 79% of the slum-dwellers belonged to the low income group with a monthly income below Rs. 600/-. The study conducted by P. Ramachandran of the Tata Institute of Social Sciences shows that in 1972, 91% of the pavement dwellers had a monthly income of less than Rs. 200/-. The cost of obtaining any kind of shelter in Bombay is beyond the means of a pavement dweller. The principal public housing sectors in Maharashtra, namely, The Maharashtra Housing and Area Development Agency (MHADA) and the City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) have been able to construct only 3000 and 1000 units respectively as against the annual need of 60,000 units. In any event, the cost of housing provided even by these public sector agencies is beyond the means of the slum and pavement-dwellers. Under the Urban Land (Ceiling and Regulation) Act, 1975, private land owners and holders are given facility to provide housing to the economically weaker sections of the society at a stipulated price of Rs. 90/- per sq. ft., which also is beyond the means of the slum and pavement-dwellers. The reigning market price of houses in Bombay varies from Rs. 150/- per sq. ft. outside Bombay to Rs. 2000/- per sq. ft. in the centre of the city.

24. The petitioners dispute the contention of the respondents regarding the non-availability of vacant land for allotment to houseless persons. According to them, about 20,000 hectares of unencumbered land is lying vacant in Bombay. The Urban Land (Ceiling and Regulation) Act, 1975 has failed to achieve its object as is evident from the fact that in Bombay, 5% of the land-holders own 55% of the land. Even though 2952.83 hectares of urban land is available for being acquired by the State Government as being in excess of the permissible ceiling area, only 41.51% of this excess land was, so far, acquired. Thus, the reason why there are homeless people in Bombay is not that there is no land on which homes can be built for them but, that the planning policy of the State Government permits high density areas to develop with vast tracts of land lying vacant. The pavement-dwellers and the slum-dwellers who constitute 50% of the population of Bombay, occupy only 25% of the city's residential land. It is in these circumstances that out of sheer necessity for a bare existence, the petitioners are driven to occupy the pavements and slums. They live in Bombay because they are employed in Bombay and they live on pavements because there is no other place where they can live. This is the factual context in which the petitioners claim the right under Articles 19(1) (e) and (g) and Article 21 of the Constitution.

25. The petitioners challenge the vires of section 314 read with sections 312 and 313 of the Bombay Municipal Corporation Act, which empowers the Municipal Commissioner to remove, without notice, any object or structure or fixture which is set up in or upon any street. It is contended that, in the first place, section 314 does not authorise the demolition of a dwelling even on pavement and secondly, that a provision which allows the demolition of a dwelling without notice is not just, fair or reasonable. Such a provision vests arbitrary and unguided power in the Commissioner. It also offends against the guarantee of equality because, it makes an unjustified discrimination between pavement dwellers on the one hand and pedestrains on the other. If the pedestrains are entitled to use the pavements for passing and repassing, so are the pavement dwellers entitled to use pavements for dwelling upon them. So the argument goes. Apart from this, it is urged, the restrictions which are sought to be imposed by the respondents on the use of pavements by pavement-dwellers are not reasonable. A state which has failed in its constitutional obligation to usher a socialistic society has no right to evict slum and pavement-dwellers who constitute half of the city's population. Therefore, sections 312, 313 and 314 of the B.M.C. Act must either be read down or struck down.

26. According to the learned Attorney-General, Mr. K.K. Singhvi and Mr. Shankaranarayanan who appear for the respondents, no one has a fundamental right, whatever be the compulsion, to squat on or construct a dwelling on a pavement, public road or any other place to which the public has a right of access. The right conferred by Article 19 (2)(e) of the Constitution to reside and settle in any part of India cannot be read to confer a licence to encroach and trespass upon public property. Sections 3 (w) and (x) of the B.M.C. Act define "Street" and "Public Street" to include a highway, a footway or a passage on which the public has the right of passage or access. Under section 289(1) of the Act, all pavements and public streets vest in the Corporation and are under the control of the Commissioner. In so far as Article 21 is concerned, no deprivation of life, either directly or indirectly, is involved in the eviction of the slum and the pavement-dwellers from public places. The Municipal Corporation is under an obligation under section 314 of the B.M.C. Act to remove obstructions on pavements, public streets and other public places. The Corporation does not even possess the power to permit any person to occupy a pavement or a public place on a permanent or quasi-permanent basis. The petitioners have not only violated the provisions, of the B.M.C. Act, but they have contravened sections 111 and 115 of the Bombay Police Act also. These sections prevent a person from obstructing any other person in the latter's use of a street or public place or from committing a nuisance. Section 117 of the Police Act prescribes punishment for the violation of these sections.

27. We will first deal with the preliminary objection raised by Mr. K.K. Singhvi, who appears on behalf of the Bombay Municipal Corporation, that the petitioners are estopped from contending that their huts cannot be demolished by reason of the fundamental rights claimed by them. It appears that a writ petition, No. 986 of 1981, was filed on the Original Side of the Bombay High Court by and on behalf of the pavement dwellers claiming reliefs similar to those claimed in the instant batch of writ petitions. A learned

Single Judge granted an ad-interim injunction restraining the respondents from demolishing the huts and from evicting the pavement dwellers. When the petition came up for hearing on July 27, 1981, counsel for the petitioners made a statement in answer to a query from the court, that no fundamental right could be claimed to put up dwellings on foot-paths or public roads. Upon this statement, respondents agreed not to demolish until October 15, 1981, huts which were constructed on the pavements or public roads prior to July 23, 1981. On August 4, 1981, a written undertaking was given by the petitioners agreeing, *inter alia,* to vacate the huts on or before October 15, 1981 and not to obstruct the public authorities from demolishing them. Counsel appearing for the State of Maharashtra responded to the petitioners' undertaking by giving an undertaking on behalf of the State Government that, until October 25, 1981, no pavement dweller will be removed out of the city against his wish. On the basis of these undertakings, the learned Judge disposed of the writ petition without passing any further orders. The contention of the Bombay Municipal Corporation is that since the pavement dwellers had conceded in the High Court that they did not claim any fundamental right to put up huts on pavements or public roads and since they had given an undertaking to the High Court that they will not obstruct the demolition of the huts after October 15, 1981, they are estopped from contending in this Court that the huts constructed by them, on the pavements cannot be demolished because of their right to livelihood, which is comprehended within the fundamental right to life guaranteed by Article 21 of the Constitution.

28. It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person make a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representation made regarding the assertion or enforcement of fundamental rights. For example, the concession made by a person that he does not possess and would not exercise his right to free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Article 22 of the Constitution. Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15, 16, 19,21 and 29 and, some on citizens and non-citizens alike, like those guaranteed by Articles 14, 21, 22 and 25 of the Constitution. No individual can barter away the freedom conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that the does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forego his precious personal freedoms on promise of transitory, immediate benefits. Therefore, notwithstanding the fact that the petitioners had conceded in the Bombay High Court that they have no fundamental right to construct hutments on pavements and that they will not object to their demolition after October 15, 1981, they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights. How far the argument regarding the existence and scope of the right claimed by the petitioners is well founded is another matter. But, the argument has to be examined despite the concession.

29. The plea of estoppel is closely connected with the plea of waiver the object of both being to ensure *bona fides* in day-to-day transactions. In *Basheshar Nath v. The Commissioner of Income Tax Delhi,* (1959) Supp. 1 SCR 528, a Constitution Bench of this Court considered the question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das C.J. and Kapoor J.) held that there can be no waiver of the fundamental rights founded on Article 14 of the Constitution. Two others (N.H. Bhagwati and Subba Rao, JJ.) held that not only could there be no waiver of the right conferred by Article 14, but there could be no waiver of any other fundamental right guaranteed by Part III of the Constitution. The Constitution makes no distinction, according to the learned Judges, between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of public policy.

30. We must, therefore, reject the preliminary objection and proceed to consider the validity of the petitioners' contentions on merits.

31. The scope of the jurisdiction of this Court to deal with writ petitions under Article 32 of the Constitution was examined by a Special Bench of this Court in *Smt. Ujjam Bai v State of Uttar Pradesh,* (1963) 1 SCR 778. That decision would show that, in three classes of cases, the question of enforcement of the fundamental rights would arise, namely, (1) where action is taken under a statute which is *ultra vires* the Constitution; (2) where the statute is *intra vires* but the action taken is without jurisdiction; and (3) an authority under an obligation to act judicially passes an order in violation of the principles of natural justice. These categories are, of course, not exhaustive. In *Naresh Shridhar Mirajkar v State of Maharashtra,* (1966) 3 SCR 744-770, a Special Bench of nine learned Judges of this Court held that, where the action taken against citizen is procedurally ultra vires, the aggrieved party can move this Court under Article 32. The contention of the petitioners is that the procedure prescribed by section 314 of the B.M.C. Act being arbitrary and unfair, it is not "procedure established by law" within the meaning of Article 21 and, therefore, they cannot be deprived of their fundamental right to life by resorting to that procedure. The petitions are clearly maintainable under Article 32 of the Constitution.

32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in *Baksey* that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v Illinois,* (1877) 94 US 113 means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh v The State of U.P.*, (1964) 1 SCR 332.

33. Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, *inter alia,* that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any court are nevertheless fundamental in the governance of the country. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

34. Learned counsel for the respondents placed strong reliance on a decision of this Court in *In Re : Sant Ram,* (1960) 3 SCR 499, in support of their contention that the right to life guaranteed by Article 21 does not include the right to livelihood. Rule 24 of the Supreme Court Rules empowers the Registrar to publish lists of persons who are proved to be habitually acting as touts. The Registrar issued a notice to the appellant and one other person to show cause why their names should not be included in the list of touts. That notice was challenged by the appellant on the ground, *inter alia,* that it contravenes Article 21 of the Constitution since, by the inclusion of his name in the list of touts, he was deprived of his right to livelihood, which is included in the right to life. It was held by a Constitution Bench of this Court that the language of Article 21 cannot be pressed in aid of the argument that the word 'life' in Article 21 includes 'livelihood' also. This decision is distinguishable because, under the Constitution, no person can claim the right to livelihood by the pursuit of an opprobrious occupation or a refarious trade or business, like toutism, gambling or living on the gains of prostitution. The petitioners before us do not claim the right to dwell on pavements or in slums for the purpose of pursuing any activity which is illegal, immoral or contrary to public interest. Many of them pursue occupations which are humble but honourable.

35. Turning to the factual situation, how far is it true to say that if the petitioners are evicted from their slum and pavement dwellings, they will be deprived of their means of livelihood? It is impossible, in the very nature of things, to gather reliable data on this subject in regard to each individual petitioner and, none has been furnished to us in that form. That the eviction of a person from a pavement or slum will inevitably lead to the deprivation of his means of livelihood, is a proposition which does not have to be established in each individual case. That is an inference which can be drawn from acceptable data. Issues of general public importance, which affect the lives of large sections of the society, defy a just determination if their consideration is limited to the evidence pertaining to specific individuals. In the resolution of such issues, there are no symbolic samples which can effectively project a true picture of grim realities of life. The writ petitions before us undoubtedly involve a question relating to dwelling houses but, they cannot be equated with a suit for the possession of a house by one private person against another. In a case of the latter kind, evidence has to be led to establish the cause of action and justify the claim. In a matter like the one before us, in which the future of half of the city's population is at stake, the Court must consult authentic empirical data compiled by agencies, official and non-official. It is by that process that the core of the problem can be reached and a satisfactory solution found. It would be unrealistic on our part to reject the petitions on the ground that the petitioners have not adduced evidence to show that they will be rendered jobless if they are evicted from the slums and pavements. Commonsense, which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants.

36. It is clear from the various expert studies to which we have referred while setting out the substance of the pleadings that, one of the main reasons of the emergence and growth of squatter-settlements in big

Metropolitan cities like Bombay, is the availability of job opportunities which are lacking in the rural sector. The undisputed fact that even after eviction, the squatters return to the cities affords proof of that position. The Planning Commission's publication, 'The Report of the Expert Group of Programmes for the Alleviation of Poverty' (1982) shows that half of the population in India lives below the poverty line, a large part of which lives in villages. A publication of the Government of Maharashtra, 'Budget and the New 20 Point Socio-Economic Programme' shows that about 45 lakhs of families in rural areas live below the poverty line and that, the average agricultural holding of a farmer, which is 0. 4 hectares, is hardly enough to sustain him and his comparatively large family. The landless labourers, who constitute the bulk of the village population, are deeply imbedded in the mire of poverty. It is due to these economic pressures that the rural population is forced to migrate to urban areas in search of employment. The affluent and the not-so-affluent are alike in search of domestic servants. Industrial and Business Houses pay a fair wage to the skilled workman that a villager becomes in course of time. Having found a job, even if it means washing the pots and pans, the migrant sticks to the big city. If driven out, he returns in quest of another job. The cost of public sector housing is beyond his modest means and the less we refer so the deals of private builders the better for all, excluding none. Added to these factors is the stark reality of growing insecurity in villages on account of the tyranny of parochialism and casteism. The announcement made by the Maharashtra Chief Minister regarding the deportation of willing pavement dwellers affords some indication that they are migrants from the interior areas, within and outside Maharashtra. It is estimated that about 200 to 300 people enter Bombay every day in search of employment. These facts constitute empirical evidence to justify the conclusion that persons in the position of petitioners live in slums and on pavements because they have small jobs to nurse in the city and there is no where else to live. Evidently, they choose a pavement or a slum in the vicinity of their place of work, the time otherwise taken in commuting and its cost being forbidding for their slender means. To lose the pavement or the slum is to lose the job. The conclusion, therefore, in terms of the constitutional phraseology is that the eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life.

37. Two conclusions emerge from this discussion : one, that the right to life which is conferred by Article 21 includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. But the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Article 21, such deprivation has to be according to procedure established by law. In the instant case, the law which allows the deprivation of the right conferred by Article 21 is the Bombay Municipal Corporation Act, 1888, the relevant provisions of which are contained in Sections 312(1), 313(1)(a) and 314. These sections which occur in Chapter XI entitled 'Regulation of Streets' read thus :

> "*Section 312-Prohibition of structures or fixtures which cause obstruction in streets.*
>
> (1) No person shall, except with the permission of the Commissioner under section 310 or 317, erect or set up any wall, fence, rail, post, step, booth or other structure or fixture in or upon any street or upon or over any open channel, drain well or tank in any street so as to form an obstruction to, or an encroachment

upon, or a projection over, or to occupy, any portion or such street, channel, drain, well or tank."

"Section 313-Prohibition of deposit, etc., of things in streets.

(1) No person shall, except with the written permission of the Commissioner,-

(a) place or deposit upon any street or upon any open channel, drain or well in any streets (or in any public place) any stall, chair, bench, box, ladder, bale or other thing so as to form an obstruction thereto or encroachment thereon."

"Section 314-Power to remove without notice anything erected deposited or hawked in contravention of section 312, 313 or 313 A.

The Commissioner may, without notice, cause to be removed-

(a) any wall, fence, rail, post, step, booth or other structure or fixture which shall be erected or set up in or upon any street, or upon or over any open channel, drain, well or tank contrary to the provisions of sub-section (1) of section 312, after the same comes into force in the city or in the suburbs, after the date of the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950 or in the extended suburbs after the date of the coming into force of the Bombay Municipal Further Extension of Limits and Schedule BBA (Amendment) Act, 1956;

(b) any stall, chair, bench, box, ladder, bale, board or shelf, or any other thing whatever placed, deposited, projected, attached, or suspended in, upon, from or to any place in contravention of sub-section (1) of section 313;

(c) any article whatsoever hawked or exposed for sale in any public place or in any public street in contravention of the provisions of section 313A and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed or kept for the purpose of sale."

By section 3(w), "street" includes a causeway, footway, passage etc., over which the public have a right of passage or access.

38. These provisions, which are clear and specific, empower the Municipal Commissioner to cause to be removed encroachments on footpaths or pavements over which the public have a right of passage or access. It is undeniable that, in these cases, wherever constructions have been put up on the pavements, the public have a right of passage or access over those pavements. The argument of the petitioners is that the procedure prescribed by Section 314 for the removal of encroachments from pavements is arbitrary and unreasonable since, not only does it not provide for the giving of a notice before the removal of an encroachment but, it provides expressly that the Municipal Commissioner may cause the encroachment to be removed "without notice".

39. It is far too well-settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair, just and reasonable. (See *E.P. Royappa v State of Tamil Nadu* (1974) 2 SCR 348, *Maneka Gandhi v Union of India* (1978) 2 SCR 621, *M.O. Hoscot v State of Maharashtra,* (1979) 1 SCR 192, *Sunil Batra I v Delhi Administration,* (1979) 1 SCR 392, *Sita Ram v State of U.P.* (1979) 2 SCR 1085, *Hussainara Khatoon I v Home Secretary, State of Bihar, Patna* (1979) 3 SCR 532, 537, *Hussainara Khatoon II v Home Secretary, State of Bihar, Patna* (1980) 1 SCC 81, *Sunil Batra II v Delhi Administration* (1980) 2 SCR 557, *Jolly George Verghese v The Bank of Cochin* (1980) 2 SCR 913, 921-922, *Kasturi Lal Lakshmi Reddy v State of Jammu & Kashmir* (1980) 3 SCR 1338, 1356, *and Francis Coralie Mullin v The Administrator.*

Union Territory of Delhi (1981) 2 SCR 516, 523-524*)*.

40. Just as a *mala fide* act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstnaces of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards : The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed[1] says that, "from the point of view of the ordinary citizen, it is the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work." Therefore, "He that takes the procedural sword shall perish with the sword[2]".

41. Justice K.K. Mathew points out in his article on 'The Welfare State, Rule of Law and Natural Justice', which is to be found in his book 'Democracy, Equality and Freedom', that there is "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power wherever it is found". Adopting that formulation, Bhagwati J., speaking for the Court, observed in *Ramana Dayaram Shetty v The International Airport Authority of India,* (1979) 3 SCR 1014, 1032 that it is "unthinkable that in a democracy governed by the rule of law, the Executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the Executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement".

42. Having given our anxious and solicitous consideration to this question, we are of the opinion that the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act for removal of encroachments on the footpaths or pavements over which the public has the right of passage or access, cannot be regarded as unreasonable, unfair or unjust. There is no static measure of reasonableness which can be applied to all situations alike. Indeed, the question "Is this procedure reasonable?" implies and postulates the inquiry as to whether the procedure prescribed is reasonable in the circumstances of the case. In *Francis Coralie Mullin,* (1981) 2 SCR 516, 523-524, Bhagwati, J., said :

> " ....it is for the Court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty *in a given case* is by procedure, which is reasonable, fair and just or it is otherwise." (emphasis supplied, page 524).

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[1] 'The Influence of Remedies on Rights' (Current Legal Problems 1953, Volume 6).

[2] Per Frankfurter J. in *Viteralli v Seton* 3 L.Ed (2nd series) 1012.

In the first place, footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrains are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. There is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up constructions on pavements and that of the pedestrains to make use of the pavements for passing and repassing, are competing claims and that, the former should be preferred to the latter. No one has the right to make use of public property for a private purpose without the requisite authorisation and, therefore, it is erroneous to contend that the pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon. Public streets, of which pavements form a part; are primarily dedicated for the purpose of passage and, even the pedestrains have but the limited right of using pavements for the purpose of passing and repassing. So long as a person does not transgress the limited purpose for which pavements are made, his use thereof is legitimate and lawful. But, if a person puts any public property to a use for which it is not intended and is not authorised so to use it, he becomes a trespasser. The common example which is cited in some of the English cases (see, for example, *Hickman v Maiesy* (1900) 1 Q.B: 752.) is that if a person, while using a highway for passage, sits down for a time to rest himself by the side of the road, he does not commit a trespass. But, if a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his user of the pavement would become unauthorised. As stated in *Hickman,* (1900) 1 Q.B: 752, it is not easy to draw an exact line between the legitimate user of a highway as a highway and the user which goes beyond the right conferred upon the public by its dedication. But, as in many other cases, it is not difficult to put cases well on one side of the line. Putting up a dwelling on the pavement is a case which is clearly on one side of the line showing that it is an act of trespass. Section 61 of the Bombay Municipal Corporation Act lays down the obligatory duties of the Corporation, under clause (d) of which, it is its duty to take measures for abatement of all nuisances. The existence of dwellings on the pavements is unquestionably a source of nuisance to the public, at least for the reason that they are denied the use of pavements for passing and repassing. They are compelled, by reason of the occupation of pavements by dwellers, to use highways and public streets as passages. The affidavit filed on behalf of the Corporation shows that the fall-out of pedestrains in large numbers on highways and streets constitutes a grave traffic hazzard. Surely, pedestrains deserve consideration in the matter of their physical safety, which cannot be sacrificed in order to accommodate persons who use public properties for a private purpose unauthorizedly. Under clause (c) of section 61 of the B.M.C. Act, the Corporation is under an obligation to remove obstructions upon public streets and other public places. The counter-affidavit of the Corporation shows that the existence of hutments on pavements is a serious impediment in repairing the roads, pavements, drains and streets. Section 63(k), which is discretionary, empowers the Corporation to take measures to promote public safety, health or convenience not specifically provided otherwise. Since it is not possible to provide any public conveniences to the pavement dwellers on or near the pavements, they answer the nature's call on the pavements or on the streets adjoining them. These facts provide the background to the provision for removal of encroachments on pavements and footpaths.

43. The challenge of the petitioners to the validity of the relevant provisions of the Bombay Municipal Corporation Act is directed principally at the procedure prescribed by section 314 of that Act, which provides by clause (a) that the Commissioner may, *without notice,* take steps for the removal of encroachments in or upon any street, channel, drain, etc. By reason of section 3(w), 'street' includes a causeway, footway or passage. In order to decide whether the procedure prescribed by section 314 is fair and reasonable, we must first determine the true meaning of that section because, the meaning of the law determines its legality. If a law is found to direct the doing of an act which is forbidden by the Constitution or to compel, in the performance of an act, the adoption of a procedure which is impermissible under the Constitution, it would have to be struck down. Considered in its proper perspective, section 314 is in the nature of an enabling provision and not of a compulsive character. It enables the Commissioner, in appropriate cases, to dispense with previous notice to persons who are likely to be affected by the proposed action. It does not require and, cannot be read to mean that, in total disregard of the relevant circumstances pertaining to a given situation, the Commissioner must cause the removal of an encroachment without issuing previous notice. The primary rule of construction is that the language of the law must receive its plain and natural meaning. What section 314 provides is that the Commissioner *may,* without notice, cause an encroachment to be removed. It does not command that the Commissioner shall, without notice, cause an encroachment to be removed. Putting it differently, section 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of this interpretation because it helps sustain the validity of the law. Reading section 314 as containing a command not to issue notice before the removal of an encroachment will make the law invalid.

44. It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the *audi alteram partem* rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place, the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.

45. It was urged by Shri K.K. Singhvi on behalf of the Municipal Corporation that the

Legislature may well have intended that no notice need be given in any case whatsoever because, no useful purpose could be served by issuing a notice as to why an encroachment on a public property should not be removed. We have indicated above that far from so intending, the Legislature has left it to the discretion of the Commissioner whether or not to give notice, a discretion which has to be exercised reasonably. Counsel attempted to demonstrate the practical futility of issuing the show cause notice by pointing out firstly, that the only answer which a pavement dweller, for example, can make to such a notice is that he is compelled to live on the pavement because he has no other place to go to and secondly, that it is hardly likely that in pursuance of such a notice, pavement dwellers or slum dwellers would ask for time to vacate since, on their own showing, they are compelled to occupy some pavement or slum or the other if they are evicted. It may be true to say that, in the generality of cases, persons who have committed encroachments on pavements or on other public properties may not have an effective answer to give. It is a notorious fact of contemporary life in metropolitan cities, that no person in his senses would opt to live on a pavement or in a slum, if any other choice were available to him. Anyone who cares to have even a fleeting glance at the pavement or slum dwellings will see that they are the very hell on earth. But, though this is so, the contention of the Corporation that no notice need be given because, there can be no effective answer to it, betrays a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice. The decision to dispense with notice cannot be founded upon a presumed impregnability of the proposed action. For example, in the common run of cases, a person may contend in answer to a notice under section 314 that (i) there was, in fact, no encroachment on any public road, footpath or pavement, or (ii) the encroachment was so slight and negligible as to cause no nuisance or inconvenience to other members of the public, or (iii) time may be granted for removal of the encroachment in view of humane considerations arising out of personal, seasonal or other factors. It would not be right to assume that the Commissioner would reject these or similar other considerations without a careful application of mind. Human compassion must soften the rough edges of justice in all situations. The eviction of the pavement or slum dweller not only means his removal from the house but the destruction of the house itself. And the destruction of a dwelling house is the end of all that one holds dear in life. Humbler the dwelling, greater the suffering and more intense the sense of loss.

46. The proposition that notice need not be given of a proposed action because, there can possibly be no answer to it, is contrary to the well-recognized understanding of the real import of the rule of hearing. That proposition overlooks that justice must not only be done but must manifestly be seen to be done and confuses one for the other. The appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done. Procedural safeguards have their historical origins in the notion that conditions of personal freedom can be preserved only when there is some institutional check on arbitrary action on the part of public authorities[3]. The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decisions taken by public authorities operate, to participate in the processes by which those decisions are made, an opportunity that expresses their dignity as persons[4].

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[3] Kadish, "Methodology and Criteria in Due Process Adjudication-A Survey and Criticism," 66 Yale L.J. 319, 340 (1957).

> "Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experiences at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a *person* rather than a *thing*, is at least to be consulted about what is done with one, Justice Frankfurter captured part of this sense of procedural justice when he wrote that the "validity and moral authority of a conclusion largely depend on the mode by which it was reached. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done"[5].
>
> At stake here is not just the much acclaimed *appearance* of justice but, from a perspective that treats process as intrinsically significant, the very *essence* of justice"[6].

The instrumental facet of the right of hearing consists in the means which it affords of assuring that the public rules of conduct, which result in benefits and prejudices alike, are in fact accurately and consistently followed.

> "It ensures that a challenged action accurately reflects the substantive rules applicable to such action ; its point is less to assure *participation* than to use participation to assure *accuracy*"[7].

47. Any discussion of this topic would be incomplete without reference to an important decision of this Court in *S.L. Kapoor v Jagmohan,* (1981) 1 SCR 746, 766. In that case, the supersession of the New Delhi Municipal Committee was challenged on the ground that it was in violation of the principles of natural justice since, no show cause notice was issued before the order of supersession was passed. Linked with that question was the question whether the failure to observe the principles of natural justice matters at all, if such observance would have made no difference, the admitted or indisputable facts speaking for themselves. After referring to the decisions in *Ridge v Baldwin* (1964) AC 40 at 68; *John v Rees* (1970) 1 Chancery 345 at 402; *Annamunthodo v Oilfieids Workers' Trade Union* (1961) 3 All E.R. 621 (H.L.) at 625; *Margarita Fuentes at al. v Tobert L. Shevin* 32. L. Ed. 2d 556 at 574; *Chintepalli Agency Taluk Arrack Sales Cooperative Society Ltd. v Secretary (Food & Agriculture) Government of Andhra Pradesh* (1978) 1 SCR 563 at 567, 569-70 and to an interesting discussion of the subject in Jackson's Natural Justice (1980 Edn.), the Court, speaking through one of us, Chinnappa Reddy, J. said :

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of

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4. Goldberg v Kelly, 397 U.S. 254, 264-65 (1970) (right of the poor to participate in public processes).
5. Joint Anti-fascist Refugee Committee v Mc Grath, 341. U.S. 123, 171-172 (1951).
6. See "American Constitutional Law" by Laurence H. Tribe, Professor of Law, Harvard University (Ed. 1978, page 503).
7. See Laurence H. Tribe, page 503.

> natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced".

These observations sum up the true legal position regarding the purport and implications of the right of hearing.

48. The jurisprudence requiring hearing to be given to those who have encroached on pavements and other public properties evoked a sharp response from the respondents' counsel. "Hearing to be given to trespassers who have encroached on public properties? To persons who commit crimes?", they seemed to ask in wonderment. There is no doubt that the petitioners are using pavements and other public properties for an unauthorised purpose. But, their intention or object in doing so is not to "commit an offence or intimidate, insult or annoy any person", which is the gist of the offence of `Criminal trespass, under section 441 of the Penal Code. They manage to find a habitat in places which are mostly filthy or marshy, out of sheer helplessness. It is not as if they have a free choice to exercise as to whether to commit an encroachment and if so, where. The encroachments committed by these persons are involuntary acts in the sense that those acts are compelled by inevitable circumstances and are not guided by choice. Trespass is a tort. But, even the law of Torts requires that though a trespasser may be evicted forcibly, the force used must be no greater than what is reasonable and appropriate to the occasion and, what is even more important, the trespasser should be asked and given a reasonable opportunity to depart before force is used to expel him. Besides, under the Law of Torts[8], necessity is a plausible defence, which enables a person to escape liability on the ground that the acts complained of are necessary to prevent greater damage, *inter-alia*, to himself. "Here, as elsewhere in the law of torts, a balance has to be struck between competing sets of values..."[9].

49. The charge made by the State Government in its affidavit that slum and pavement dwellers exhibit especial criminal tendencies is unfounded. According to Dr. P.K. Muttagi, Head of the unit for urban studies of the Tata Institute of Social Sciences, Bombay, the surveys carried out in 1972, 1977, 1979 and 1981 show that many families which have chosen the Bombay footpaths just for survival, have been living there for several years and that 53 per cent of the pavement dwellers are self-employed as hawkers in vegetables, flowers, ice-cream, toys, balloons, buttons, needles and so on. Over 38 per cent are in the wage-employed category as casual labourers, construction workers, domestic servants and luggage carriers. Only 1.7 per cent of the total number is generally unemployed. Dr. Muttagi found among the pavement dwellers a graduate of Marathwada University and a Muslim poet of some standing. "These people have merged with the landscape, become part of it, like the chameleon", though their contact with their more fortunate neighbours who live in adjoining high-rise buildings is casual. The most important finding of Dr. Muttagi is that the pavement dwellers are a peaceful lot, "for, they stand to lose their shelter on the pavement if they disturb the affluent or indulge in fights with their fellow dwellers." The charge of the State Government, besides being contrary to these scientific findings, is born of prejudice against the poor and the destitute. Affluent people living in sky-scrapers also commit crimes varying from living on the gains of prostitution and defrauding the public treasury to smuggling. But, they get away. The pavement dwellers, when caught, defend themselves by asking, "Who does not commit crimes in this city"? As observed by Anand Chakravarti, "The separation between existential realities and the rhetoric of socialism indulged in by the wielders of power in the government cannot be more profound"[10].

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[8] See Ramaswami Iyer's 'Law of Torts' 7th Ed. by Justice and Mrs. S.K. Desai, (Page 98, para 41).

[9] See Salmond and Heuston, 'Law of Torts', 18th Ed. (Chapter 21, page 463, Article 185- 'Necessity').

50. Normally, we would have directed the Municipal Commissioner to afford an opportunity to the petitioners to show why the encroachments committed by them on pavements of footpaths should not be removed. But, the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads. As observed in *S.L. Kapoor*, " ... where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs." Indeed, in that case, the Court did not set aside the order of supersession in view of the factual position stated by it. But, though we do not see any justification for asking the Commissioner to hear the petitioners, we propose to pass an order which, we believe, he would or should have passed, had he granted a hearing to them and heard what we did. We are of the opinion that the petitioners should not be evicted from the pavements, footpaths or accessory roads until one month after the conclusion of the current monsoon season,that is to say, until October 31, 1985. In the meanwhile, as explained later, steps may be taken to offer alternative pitches to the pavement dwellers who were or who happened to be censused in 1976. The offer of alternative pitches to such pavement dwellers should be made good in the spirit in which it was made, though we do not propose to make it a condition precedent to the removal of the encroachments committed by them.

51. Insofar as the Kamraj Nagar Basti is concerned, there are over 400 hutments therein. The affidavit of the Municipal Commissioner Shri D.M. Sukhthankar, shows that the Basti was constructed on an accessory road, leading to the highway. It is also clear from that affidavit that the hutments were never regularised and no registration numbers were assigned to them by the Road Development Department. Since the Basti is situated on a part of the road leading to the Express Highway, serious traffic hazards arise on account of the straying of the Basti children on to the Express Highway, on which there is heavy vehicular traffic. The same criterion would apply to the Kamraj Nagar Basti as would apply to the dwellings constructed unauthorisedly on other roads and pavements in the city.

52. The affidavit of Shri Arvind V. Gokak, Administration of the Maharashtra Housing and Areas Development Authority, Bombay, shows that the State Government had taken a decision to compile a list of slums which were required to be removed in public interest and to allocate, after a spot inspection, 500 acres of vacant land in or near the Bombay Suburban District for resettlement of hutment dwellers removed from the slums. A census was accordingly carried out on January 4, 1976 to enumerate the slum

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[10] 'Some aspects of inequality in rural India : A Sociological Perspective published in 'Equality and inequality, Theory and Practice' edited by Andro Beteille, 1983.

dwellers spread over about 850 colonies all over Bombay. About 67% of the hutment dwellers produced photographs of the heads of their families, on the basis of which the hutments were numbered and their occupants were given identity cards. Shri Gokak further says in his affidavit that the Government had also decided that the slums which were in existence for a long time and which were improved and developed, would not normally be demolished unless the land was required for a public purpose. In the event that the land was so required, the policy of the State Government was to provide alternate accommodation to the slum dwellers who were censused and possessed identity cards. The Circular of the State Government dated February 4, 1976 (No. SIS/176/D-41) bears out this position. In the enumeration of the hutment dwellers, some persons occupying pavements also happened to be given census cards. The Government decided to allot pitches to such persons at a place near Malavani. These assurances held forth by the Government must be made good. In other words, despite the finding recorded by us that the provision contained in section 314 of the B.M.C. Act is valid, pavement dwellers to whom census cards were given in 1976 must be given alternate pitches at Malavani though not as a condition precedent to the removal of encroachments committed by them. Secondly, slum dwellers who were censused and were given identity cards must be provided with alternate accommodation before they are evicted. There is a controversy between the petitioners and the State Government as to the extent of vacant land which is available for resettlement of the inhabitants of pavements and slums. Whatever that may be, the highest priority must be accorded by the State Government to the resettlement of these unfortunate persons by allotting to them such land as the Govt. finds to be conveniently available. The Maharashtra Employment Guarantee Act, 1977, the Employment Guarantee Scheme, the 'New Twenty Point Socio-Economic Programme, 1982', the 'Affordable Low Income Shelter Programme in Bombay Metropolitan Region' and the 'Programme of House Building for the economically weaker sections' must not remain a dead letter as such schemes and programmes often do. Not only that, but more and more such programmes must be initiated if the theory of equal protection of laws has to take its rightful place in the struggle for equality. In these matters, the demand is not so much for less governmental interference as for positive governmental action to provide equal treatment to neglected segments of society. The profound rhetoric of socialism must be translated into practice for, the problems which confront the state are problems of human destiny.

53. During the course of arguments an affidavit was filed by Shri S.K. Jahagirdar, Under Secretary in the Department of Housing, Government of Maharashtra, setting out the various housing schemes which are under the consideration of the State Government. The affidavit contains useful information on various aspects relating to slum and pavement dwellers. The census of 1976 which is referred to in that affidavit shows that 28.18 lakhs of people were living in 6,27,404 house-holds spread over 1680 slum pockets. The earning of 80 percent of the slum households did not exceed Rs. 600/- per month. The State Government has a proposal to undertake 'Low Income Scheme Shelter Programme' with the aid of the World Bank. Under that scheme 85,000 small plots for construction of houses would become available, out of which 40,000 would be in Greater Bombay, 25,000 in the Thane-Kalyan area and 20,000 in the New Bombay region. The State Government is also proposing to undertake 'Slum Upgradation Programme

(SUP)' under which basic civil amenities would be made available to the slum dwellers. We trust that these Schemes, grandiose as they appear, will be pursued faithfully and the aid obtained from the World Bank utilised systematically and effectively for achieving its purpose.

54. There is no short term or marginal solution to the question of squatter colonies, nor are such colonies unique to the cities of India. Every country, during its historical evolution, has faced the problem of squatter settlements and most countries of the underdeveloped world face this problem today. Even the highly developed affluant societies face the same problem, though with their larger resources and smaller population, their task is far less difficult. The forcible eviction of squatters, even if they are resettled in other sites, totally disrupts the economic life of the household. It has been a common experience of the administrators and planners that when resettlement is forcibly done, squatters eventually sell their new plots and return to their original sites near their place of employment. Therefore, what is of crucial importance to the question of thinning out the squatters' colonies in metropolitan cities is to create new opportunities for employment in the rural sector and to spread the existing job opportunities evenly in urban areas. Apart from the further misery and degradation which it involves, eviction of slum and pavement dwellers is an ineffective remedy for decongesting the cities. In a highly redable and moving account of the problems which the poor have to face, Susan George says[11] :

> "So long as thoroughgoing land reform, re-grouping and distribution of resources to the poorest, bottom half of the population does not take place, Third World countries can go on increasing their production until hell freezes and hunger will remain, for the production will go to those who already have plenty-to the developed world or to the wealthy in the Third World itself. Poverty and hunger walk hand in hand." (Page 18).

55. We will close with a quotation from the same book which has a message :

> "Malnourished babies, wasted mothers, emaciated corpses in the streets of Asia have definite and definable reasons for existing. Hunger may have been the human race's constant companion, and `the poor may always be with us', but in the twentieth century, one cannot take this fatalistic view of the destiny of millions of fellow creatures. Their condition is not inevitable but is caused by identifiable forces within the province of rational, human control."(p. 15)

56. To summarise, we hold that no person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose like for example, a garden or a playground; that the provision contained in section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case; and that, the Kamraj Nagar Basti is situated on an accessory road leading to the Western Express Highway. We have referred to the assurances given by the State Government in its pleadings here which, we repeat, must be made good. Stated briefly, pavement dwellers who were censused or who happened to be censused in 1976 should be given, though not as a condition precedent to their removal, alternate pitches at Malavani or, at such other convenient place as the Government considers reasonable but not farther away in terms of distance; slum dwellers who were given identity cards and whose dwellings were numbered in the 1976 census must be given alternate sites for their re-settlement; slums which have been in existence for a long time, say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land, is required for a public purpose, in which case, alternate sites or accommodation will be provided to them; the 'Low Income Scheme Shelter Programme' which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and, the 'Slum Upgradation Programme (SUP)' under which basic amenities are to be given to slum dwellers will be implemented without delay. In order to minimise the hardship involved in any eviction, we direct that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season, that is, until October 31, 1985 and, thereafter, only in accordance with this judgment. If any slum is required to be removed before that date, parties may apply to this Court. Pavement dwellers, whether censused, or uncensused, will not be removed until the same date viz. October 31, 1985.

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[11] 'How the Other Half Dies-The Real Reasons for World Hunger' (Pelican books).

57. The Writ Petitions will stand disposed of accordingly. There will be no order as to costs.

SCALE (PIL) 1981-97 1506

SHEELA BARSE & ANR.; M.C. MEHTA *Petitioners*

VS

UNION OF INDIA & ORS.; STATE OF ORISSA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI. AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — RIGHTS OF CHILDREN — CHILDREN LODGED IN JAILS — Certain directions given.

1. Mr. Venkatramani is discharged from this case at his request.

2. We are adjourning the Writ Petition to 19.7.86 to enable the petitioner appearing in person to analyse the reports which have come from the various District Judges. It is a little surprising that though we gave directions long back directing the District Judges/Chief Judicial Magistrates to send their reports of inspection of not only the District Jails but also sub jails in the Districts on or before 10.6.86, the reports have not yet come in respect of several Districts and particularly in respect of sub-jails in the Districts. We propose to give directions for expediting submission of these reports at the next hearing of the Writ Petition. We are very keen that the High Courts should be requested to minitor the submission of these reports and we have therefore requested the counsel appearing in the case to make constructive suggestions in that behalf.

3. Meanwhile, there are a few matters which need our urgent directions. It seems that there are a number of children who are mentally or physically handicapped and there are also children who are abandoned or destitute and who have no one to take care of them. They are lodged in various jails in different states. It is necessary to make provision in regard to them because they cannot be allowed to remain in jails. In fact, no child below the age prescribed in various Children's Acts can be kept in jail, but the position becomes very acute in the case of these who are physically or mentally

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Order dated July 12, 1986 in W.P. (Crl.) No. 1451/85 with W.P. (Crl.) No. 1501/84. [1986(2) SCALE 1] handicapped or who are abandoned or destitute because they are kept in jails not because of any offence alleged to have been committed by them but only by way of what may be euphemistically called 'safe custody'. The State Governments must take care of these mentally or physically handicapped children and remove them to a Home where they can be properly looked after and so far as the mentally handicapped children are concerned, they can be given proper medical treatment and physically handicapped children may be given not only medical treatment but also vocational training to enable them to earn their livelihood. Those children who are abandoned or lost and are presently kept in jails must also be removed by the State Governments to appropriate places where they can be looked after and rehabilitated. We would, therefore, direct the State Governments to intimate to the Court the names and particulars of Government-run Homes or places where these children can be removed and taken care of and also inform the court as to what the State Governments propose to do in this behalf. We realise that possibly there may not be sufficient accommodation in the Homes or places run by the State Governments and it may, therefore, be necessary to mobilise social service organisations in this task of rehabilitation of children. We would, therefore, direct the Social Welfare Department of each State Government to submit to the Court at the next hearing of the Writ Petition a list giving names of Governmental, Semi-governmental and Non-governmental Organisations which can take care of these children and look after them with a view to their rehabilitation. We would also request the Central Social Welfare Board as also the Social Welfare Board in each State to provide this information to the Court by addressing a letter to the Registrar of this Court at the earliest. We would also ask the Director General, All India Radio and the Director General, Doordarshan to give publicity requesting non-governmental social service organisations to offer their services for the purpose of accepting these children with a view to taking care of them and providing for their rehabilitation in accordance with a hand-out to be sent by the Registrar of this Court.

4. There are two girls in the Jalpaiguri District Jail who have been kept in that jail in "safe custody". One of them is Parbati Dass, aged 8, who has been detained in Jail since 12.11.84 and the other is Sabita Sah, age 10, who has been detained in Jail since 20.8.85. These two children are not charged with any offence under any provision of law and it is strange that they should be kept in Jail in so-called "safe custody". The District Judge, Jalpaiguri who has pointed out these two cases in his report has recommended that these two children should be transferred to the Home in Raiketpara. We would accordingly direct that Parbati Dass and Sabita Shah should be transferred immediately to the Home in Raiketpara as recommended by the District Judge, Jalpaiguri.

5. The Writ Petition will stand adjourned to 19.7.1986.

SCALE (PIL) 1981-97 1507

SHEELA BARSE & ANR. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI. AND RANGANATH MISRA, J.

Order dated August 5, 1986 in W.P. No. 1451 of 1985. [1986(2) SCALE 184]

PUBLIC INTEREST LITIGATION — RIGHTS OF CHILDREN — CHILDREN LODGED IN JAILS — Further directions given (See 1986(2) SCALE 1).

1. This application under Article 32 of the Constitution has asked for release of children below the age of 18 years detained in jails within different States of the country, production of complete information of children in jails, information as to the existence of juvenile courts, homes and schools and for a direction that the District Judges should visit jails or sub-jails within their jurisdiction to ensure that children are properly looked after when in custody as also for a direction to the State Legal Aid Boards to appoint duty counsel to ensure availability of legal protection for children as and when they are involved in criminal cases and are proceeded against. The Union of India and all the States and Union Territories have been impleaded as respondent.

2. On September 24, 1985, notice was directed to all the respondents. A few of the respondents States filed counter affidavits in response to the notice. The matter was adjourned on March 31, 1986, to April 15, 1986, to enable the respondents who had not yet filed their affidavits to file such affidavits. On April 15, 1986, after hearing counsel who appeared for the parties this Court pointed out:

> "....It is an elementary requirement of any civilised society and it has been so provided in various statutes concerning children that children should not be confined to jail because incarceration in jail has a dehumanising effect and it is harmful to the growth and development of children. But even so the facts placed before us, which include the survey made by the Home Ministry and the Social Welfare Department show that a large number of children below the age of 16 years are confined in jails in various parts of the country."

This Court directed the District Judges in the country to nominate the Chief Judicial Magistrate or any other judicial Magistrate to visit the District Jail and Sub-Jail in their districts for the purpose of ascertaining how many children below the age of 16 years are confined in jail, what are the offences in respect of which they are charged, how many of them have been in detention - whether in the same jail or previously in any other jail - before being brought to the jail in question, whether they have been produced before the children's court and, if so, when and how many times and whether any legal assistance is provided to them. The Court also directed that "each District Judge will give utmost priority to this direction and the Superintendent of each jail in the district will provide full assistance to the District Judge or the Chief Judicial Magistrate or the judicial magistrate, in this behalf who will be entitled to inspect the registers of the jail visited by him as also any other document/documents which he may want to inspect and will also interview the children if he finds it necessary to do so for the purpose of gathering the correct information in case of any doubt. The District Judge, Chief Judicial Magistrate or the Judicial Magistrate, as the case may be, will submit report to this court within 10 weeks from today. It will also be stated in the report as to whether there are any children's home, Remand Home or Observation Homes for children within his district and if there are, he will inspect such children homes, remand homes and observation homes for the purpose of ascertaining as to what are the conditions in which children are kept there and whether facilities for education or vocational training exist. Such reports will be submitted by each District Judge through the Registrars of the respect High Court to the Registrar of this Court. Each State Government will also file affidavit stating as to how many children homes, remand homes and observation homes for children are in existence in the respective State and how many inmates are kept in such children homes, remand homes or observation homes. We would also direct the State Legal Aid & Advice Board in each State or any other Legal Aid Organisation existing in the State concerned, to send two lawyers to each jail within the State once in a week for the purpose of providing legal assistance to children below the age of 16 years who are confined in the jails." The writ petition was adjourned to July 17, 1986.

3. On April 24, 1986, the Court again made the following order :

> "We have adjourned the writ petition to 17.7.86 for hearing and final disposal but we feel that it would be desirable to take it up when the Bench sits in vacation. We would direct that the matter may be placed for final disposal before a Bench of this Court on 24.6.1986. We have granted two months' time to the District Judges to make their reports vide our order dated 15.4.1986. Fresh intimation to this effect may be sent to the District Judges through the Registrars of the High Courts. We may reiterate that as soon as the reports are received copies thereof may be supplied to the Advocates during the vacation itself..."

The writ petition was thereafter listed on July 12, 1986, during the long vacation for hearing. The Court found that though reports from several District Judges had come in response to the earlier direction, yet several District Judges had not sent their report. The Court observed:

> "It is a little surprising that though we gave directions long back directing the District Judges/Chief Judicial Magistrates to send their reports of inspection of not only the District Jails but also Sub-Jails in the districts on or before 10.6.86 (24.6.86), the reports have not yet come in respect of several Districts and particularly in respect of sub-jails in the Districts. We propose to give directions for expediting submission of these reports at the next hearing of the writ petition. We are very keen that the High Courts should be requested to monitor the submission of these reports and we have therefore requested the counsel appearing in the case to make constructive suggestions in that behalf."

Six further weeks have passed beyond the time indicated in the order dated April 15, 1986, and even till this day analysis shows that several District Judges have not complied with the direction. This Court had intended that the reports of the District Judges would be sent to the Registry of this Court through the Registrars of the respective High Courts. This obviously meant that the Registrars of the High Courts were to ensure compliance. We are both concerned and surprised that a direction given by the apex Court has not been properly carried out by the District Judges who are an effective instrumentality in the hierarchy of the judicial system. Failure to submit the reports within the time set by the Court has required adjournment of the hearing of the writ petition on more than one occasion. We are equally surprised that the High Courts have remained aloof and indifferent and have never endeavoured to ensure submission of the reports by the District Judges within the time indicated in the order of this Court. We direct that every defaulting District Judge who has not yet submitted his report shall unfailingly comply with the direction and furnish the report by August 31, 1986, through his High Court and the Registrar of every High Court shall ensure that compliance with the present direction is made.

4. Article 39(f) of the Constitution provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Every State excepting Nagaland has a Children's Act. It is a fact that some of the Acts have been in existence prior to inclusion of the aforesaid clause in Article 39 by the amendment of 1976. Though the Acts are on the statute book, in some states the Act has not yet been brought into force. This piece of legislation is for the fulfilment of a constitutional obligation and is a beneficial statute. Obviously the State Legislatures have enacted the law on being satisfied that the same is necessary in the interest of the society, particularly of children. There is hardly any justification for not enforcing the statute. For instance, in the case of Orissa though the Act is of 1982, for four years it has not been brought into force. Ordinarily it is a matter for the State Government to decide as to when a particular statute should be brought into force but in the present setting we think that it is appropriate that without delay State should ensure that the Act is brought into force and administered in accordance with the provisions contained therein. Such of the States where the Act exists but has not been brought into force should indicate by filing a proper affidavit by August 31, 1986, as to why the Act is not being brought into force in case by then the Act is still not in force.

5. Under the Jail Manuals prevalent in different States every jail has a nominated committee of visitors and invariably the District and Sessions Judge happens to be one of the visitors. The purpose of having visitors is to ensure that the provisions in the Manual are strictly complied with so far as the convicts and the under-trial prisoners detained in jail are concerned. Being in jail results in curtailment of freedom. It is, therefore, necessary that the safeguards which are provided in the Manual should be strictly complied with and the prisoners should have the full benefit of the provisions contained in the Manual. We direct that every District and Sessions Judge should visit the District Jail at least once in two months and in course of his visit he should take particular care about child prisoners, both convicts and under-trials and as and when he sees any infraction in regard to the children in the prison he should draw the attention of the Administration as also of his High Court. We hope and trust that as and when such reports are received in the High Court the same would be looked into and effective action would be taken thereupon. It is hardly necessary to point out that it is the obligation of the High Court to ensure that all persons in judicial custody within its jurisdiction are assured of acceptable living conditions.

6. This Court had made a direction to the State Legal Aid Boards to provide the facility of lawyer's service in regard to under-trial children. No report has yet been received from any Board as regards action taken in this direction. The State Boards will now furnish the information also by August 31, 1986.

7. Certain other directions have been given earlier by this Court. All such directions shall be complied with and returns shall be furnished to this Court also by August 31, 1986. We hope and trust that there would be strict compliance with these directions now made and there would be no occasion for any further direction to be made for the self same purpose. The writ application shall be placed for directions on September 8, 1986.

8. The petitioner, we must record, has undertaken real social service in bringing this matter before the Court. She has stated to us that she intends visiting different parts of the country with a view to gathering further information relevant to the matter, verify the correctness of statements of facts made in the counter affidavits filed by the respondent States and in the reports of District Judges. We are of the view that the petitioner should have access to information and should be permitted to visit jails, children's homes, remand homes, observation homes, borstal schools and all institutions connected with housing of delinquent children. We would like to point out that this is not an adversary litigation and the petitioner need not be looked upon as an adversary. She has in fact volunteered to do what the State should have done. We expect that each State would extend to her every assistance she needs during her visit as aforesaid. We direct that the Union Government - respondent No.1 - shall deposit a sum of rupees ten thousand for the time being within two weeks in the Registry of this Court which the petitioner can withdraw to meet her expenses.

SCALE (PIL) 1981-97 1511

SHEELA BARSE & ORS. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI. AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — RIGHTS OF CHILDREN — CHILDREN LODGED IN JAILS — Further Directions given. (See 1986 (2) SCALE 184).

Referred: Hussainara Khatoon & Ors. vs Home Secretary, State of Bihar, 1979(3) SCR 169.

1. We made an Order on 12th July, 1986 issuing various directions in regard to physically and mentally retarded children as also abandoned or destitute children who are lodged in various jails in the country for 'safe custody'. We also directed the Director General of Doordarshan as also the Director General of All India Radio to give publicity seeking cooperation of non-governmental social service organisations in the task of rehabilitation of these children. We were extremely pained and anguished that these children should be kept in jail instead of being properly looked after, given adequate medical treatment and imparted training in various skills which would make them independent and self-reliant. Some years ago we came out with a National Policy for the Welfare of Children which contained the following preambulatory declaration:-

> "The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy endowed with the skill and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice."

If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that a child shall not be kept in jail. Even apart from this statutory

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Order dated August 13, 1986 in W.P. (Crl.) No. 1451 of 1985 [1986(2) SCALE 230] prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country as is now evident from the reports of the survey made by the District Judges pursuant to our order dated 15th April, 1986. Even where children are accused of offences, they must not be kept in jails. It is no answer on the part of the State to say that it has not got enough number of remand homes or observation homes or other places where children can be kept and that is why they are lodged in jails. It is also no answer on the part of the State to urge that the ward in the jail where their children are kept is separate from the ward in which the other prisoners are detained. It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps him in jail. We would therefore like once again to impress upon the State Governments that they must set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes or observation homes, the children should be released on bail instead of being subjected to incarceration in jail.

2. The problem of detention of children accused of an offence would become much more easy of solution if the investigation by the police and the trial by the Magistrate could be expedited. The reports of survey made by District Judges show that in some places children have been in jail for quite long periods. We fail to see why investigation into offences alleged to have been committed by children cannot be completed quickly and equally why can the trial not take place within a reasonable time after the filing of the charge-sheet. Really speaking, the trial of children must take place in the Juvenile Courts and not in the regular criminal courts. There are special provisions enacted in various statutes relating to children providing for trial by Juvenile Courts in accordance with a special procedure intended to safeguard the interest and welfare of children, but, we find that in many of the States there are no Juvenile Courts functioning at all and even where there are Juvenile Courts, they are nothing but a replica of the ordinary criminal courts, only the label being changed. The same Magistrate who sits in the ordinary criminal court goes and sit in the Juvenile Court and mechanically tries cases against children. It is absolutely essential, and this is something which we wish to impress upon the State Governments with all the earnestness at our command, that they must set up Juvenile Courts, one in each district, and there must be a special cadre of Magistrates who must be suitably trained for dealing with cases against children. They may also do other criminal work, if the work of the Juvenile Court is not sufficient to engage them fully, but they must have proper and adequate training for dealing with cases against juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach.

3. We would also direct that where a complaint is filed or first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of filing of the complaint or lodging of the First

Information Report and if the investigation is not completed within this time, the case against the child must be treated as closed. If within three months, the chargesheet is filed against the child in case of an offence punishable with imprisonment of not more than 7 years, the case must be tried and disposed of within a further period of 6 months at the outside and this period should be inclusive of the time taken up in committal proceedings, if any. We have already held in *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar* 1979 (3) SCR 169, that the right to speedy trial is a fundamental right implicit in Art. 21 of the Constitution. If an accused is not tried speedily and his case remains pending before the Magistrate or the Sessions court for an unreasonable length of time, it is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held up on account of some interim Order possed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right. One of the primary reasons why trial of criminal cases is delayed in the courts of Magistrates and Additional Sessions Judges is the total inadequacy of judge-strength and lack of satisfactory working conditions for Magistrates and Additional Sessions Judges. There are courts of Magistrates and Additional Sessions Judges where the workload is so heavy that it is just not possible to cope with the workload, unless there is increase in the strength of Magistrates and Additional Sessions Judges. There are instances where appointments of Magistrates and Additional Sessions Judges are held up for years and the courts have to work with depleted strength and this affects speedy trial of criminal cases. The Magistrates and Additional Sessions Judges are often not provided adequate staff and other facilities which would help improve their disposal of cases. We are, therefore, firmly of the view that every State Government must take necessary measures for the purpose of setting up adequate number of courts, appointing requisite number of Judges and providing them the necessary facilities. It is also necessary to set up an Institute or Academy for training of Judicial Officers so that their efficiency may be improved and they may be able to regulate and control the flow of cases in their respective courts. The problem of arrears of criminal cases in the courts of Magistrates and Additional Sessions Judges has assumed rather disturbing proportions and it is a matter of grave urgency to which no State Government can afford to be oblivious. But, here, we are not concerned with the question of speedy trial for an accused who is not a child below the age of 16 years. That is a question which may have to be considered in some other case where this Court may be called upon to examine as to what is reasonable length of time for a trial beyond which the court would regard the right to speedy trial as violated. So far as a child-accused of an offence punishable with imprisonment of not more than 7 years is concerned, we would regard a period of 3 months from the date of filing of the complaint or lodging of the First Information Report as the maximum time permissible for investigation and a period of 6 months from the filing of the charge sheet as a reasonable period within which the trial of the child must be completed. If that is not done, the prosecution against the child would be liable to be quashed. We would direct every State Government to give effect to this principle or norm laid down by us in so far as any future cases are concerned, but so far as concerns pending cases relating to offences punishable with imprisonment of not more than 7 years, we would direct every State Government to complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of chargesheet and if a chargesheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed.

4. We have by our order dated 5th August 1986 called upon the State Governments to bring into force and to implement vigorously the provisions of the Childrens' Acts enacted in the various States. But we would suggest that instead of each State having its own Childrens' Act different in procedure and content from the Childrens' Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Childrens' Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lie sympathy is not paid to such legislation and justification for non-implementation is not pleaded on ground of lack of finances on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation.

5. We have already given various directions by our Orders dated 12th July 1986 and 5th August 1986. We have also in the meantime received reports of survey made by several District Judges. We shall take up these matters for consideration at the next hearing of the writ petition which shall take place on 1.9.1986.

SCALE (PIL) 1981-97 1514
SHEELA BARSE & ANOTHER *Petitioners*
VS
UNION OF INDIA AND ORS. *Respondents*
CORAM: P.N. BHAGWATI, CJI AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — RIGHTS OF CHILDREN — CHILDREN LODGED IN JAILS — Further directions given.

1. In this Writ Application relating to detention of children below the age of 16 years this Court has made directions from time to time. On April 15, 1986, the Court expressed its concern about the state of affairs relating to children under detention and directed :

> "The District Judges in the country to nominate the Chief Judicial Magistrate or any other Judicial Magistrate to visit the District Jail and Sub-Jail in their districts for the purpose of ascertaining how many children below the age of 16 years are confined in jail, what are the offences in respect of which they are charged, how many of them have been in detention - whether in the same jail or previously in any other jail - before being

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Order dated November 21, 1986 in W.P. (Crl.) No. 1451 of 1985. [1986(2) SCALE 865]

> brought to the jail in question, whether they have been produced before the children's court and, if so, when and how many times and also directed that `each District Judge will give utmost priority to this direction and the Superintendent of each jail in the district will provide full assistance to the District Judge or the Chief Judicial Magistrate or the Judicial Magistrate, in this behalf who will be entitled to inspect the registers of the jail visited by him as also any other document/documents which he may want to inspect and will also interview the children if he finds it necessary to do so for the purpose of gathering the correct information in case of any doubt. The District Judge, Chief Judicial Magistrate or the Judicial Magistrate, as the case may be, will submit report to this Court within 10 weeks from to-day."

This Court again directed by its order dated August 5, 1986 that:

> "....every defaulting District Judge who has not yet submitted his report shall unfailingly comply with the direction and furnish the report by August 31, 1986, through the High Court and the Registrar of every High Court shall ensure that compliance with the present direction is made."

2. Notwithstanding our expression of anguish and concern and the specific directions referred to above, it transpires that there has been no compliance from certain quarters. For convenience, we proceed to indicate below the particulars Statewise :

Name of the State	*Name of the District from where no report has been received.*
Assam	Barpeta
	Lakhimpur
	Darrang
	Kabri-Anglong
	North Cachar
	Pragiyotishpur
Manipur	Bishnupur
	Chandel
	Churandarpur
	Senapati
	Tamenglang
	Thoubai
	Ukhrul
Meghalaya	East Garo Hills
	West Garo Hills
	Jainitia Hills
	West Khasi Hills
Bihar	Godda
	Gumla
	Khagaria
	Lotiardagga
	Medhapura
	Sahebganj
Maharashtra	Greater Bombay
	Gadchiroll
	Akola
Uttar Pradesh	Rai Barely
	Mathura
	Shahajahanpur

3. Some of the States like, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka and Madhya Pradesh have not filed any affidavit though there was a previous direction requiring the States to indicate their stand by filing affidavits.

4. In regard to Sub-Jails, no reports have been received in respect of such jails of 14 districts of Maharashtra. Though this matter was listed on 14.11.1986 for final disposal, an adjournment became imperative in view of the failure of compliance with the directions in the manner indicated above and the matter is adjourned till 2.12.1986. We direct the Registrars of the High Courts of the States in which the districts indicated above are located to ensure compliance with the previous directions by 30.11.1986. We hope and trust that special care will be taken to ensure compliance and this Court will not be forced to take any stringent action.

5. The petitioner has made certain allegations regarding the special schools at Lucknow and Ferozabad. Some allegations have also been made in regard to Amravati Jail. These aspects will be considered on the adjourned date of hearing.

6. We would like to indicate that the Union of India is a respondent and this Court expected that the Social Welfare Ministry would respond to the notice, place its stand before the Court and assist it for a proper disposal of the matter. Similarly, the Court also expects the Central Social welfare Board to participate in the proceedings. There has, however, been no response from these quarters.

7. Call the matter on 2.12.1986 for hearing.

SCALE (PIL) 1981-97 1516

M.C. MEHTA AND ANR. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI., RANGANATH MISRA,
G.L. OZA, M.M. DUTT AND K.N. SINGH, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COMPENSATION — CONSTITUTION — ARTICLES 21 & 32 — Award for compensation to the persons who had suffered harm on account of escape of oleum gas (reported in 1986(1) SCALE 199) — Disposing of the writ petition, Held,

A. Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases. (Para 7).

B. Shriram is engaged in the manufacture of caustic soda, chlorine etc. Its various units are set up in a single complex surrounded by thickly populated colonies. Chlorine gas is admittedly dangerous to life and health. If the gas escapes either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well-being of the people living in the vicinity can be seriously affected. Thus Shriram is engaged in an activity which has the potential to invade the right to life of large sections of people. The question is whether these factors are cumulatively sufficient to bring Shriram within the ambit of Article 12. Prima facie it is arguable that when the States' power as economic agent, economic entrepreneur and allocater of economic benefits is subject to the limitations of fundamental rights. Why should a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, not be subject to the same limitations. (Para 28).

C. That where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident

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Judgment dated December 20, 1986 in W.P. (C) No. 12739 of 1985 [1986(2) SCALE 1188] *and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands vs Fletcher (Para 31).*

D. That the measure of compensation in the kind of cases referred to in the preceding paragraph must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. (Para 32).

E. The Court directed that Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered on account of oleum gas and to file action on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from today and the Delhi Administration is directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more Judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of. (Para 33).

Bhagwati, CJI.— This writ petition under Article 32 of the Constitution has come before us on a reference made by a Bench of three Judges. The reference was made because certain questions of seminal import and high constitutional significance were raised in the course of arguments when the writ petition was originally heard. The facts giving rise to the writ petition and the subsequent events have been set out in some detail in the Judgment given by the Bench of three Judges on 17th February 1986, and it is therefore not necessary to reiterate the same. Suffice it to state that the Bench of three Judges permitted Shriram Foods and Fertilisers Industries (hereinafter referred to as Shriram) to restart its power plant as also plants for manufacture of caustic chlorine including its by products and recovery plants like soap, glycerine and technical hard oil, subject to the conditions set out in the Judgment. That would have ordinarily put an end to the main controversy raised in the writ petition which was filed in order to obtain a direction for closure of the various units of Shriram on the ground that they were hazardous to the community and the only point in dispute which would have survived would have been whether the units of Shriram should be directed to be removed from the place where they are presently situate and relocated in another place where there would not be much human habitation so that there would not be any real danger to the health and safety of the people. But while the writ petition was pending there was escape of oleum gas from one of the units of Shriram on 4th and 6th December 1985 and applications were filed by the Delhi Legal Aid & Advice Board and the Delhi Bar Association for award of compensation to the persons who had suffered harm on account of escape of oleum gas. These applications for compensation raised a number of issues of great constitutional importance and the Bench of three Judges therefore formulated these issues and asked the petitioner and those supporting him as also Shriram to file their respective written submissions so that the Court could take up the hearing of these applications for compensation. When these applications for compensation came up for hearing it was felt that since the issues involved substantial questions of law relating to the interpretation of Articles 21 and 32 of the Constitution, the case should be referred to a larger Bench of five Judges and this is how the case has now come before it.

2. Mr. Diwan, learned counsel appearing on behalf of Shriram raised a preliminary objection that the Court should not proceed to decide these constitutional issues since there was no claim for compensation originally made in the writ petition and these issues could not be said to arise on the writ petition. Mr. Diwan conceded that the escape of oleum gas took place subsequent to the filing of the writ petition but his argument was that the petitioner could have applied for amendment of the writ petition so as to include a claim for compensation for the victims of oleum gas but no such application for amendment was made and hence on the writ petition as it stood, these constitutional issue did not arise for consideration. We do not think this preliminary objection raised by Mr. Diwan is sustainable. It is undoubtedly true that the petitioner could have applied for amendment of the writ petition so as to include a claim for compensation but merely because he did not do so, the applications for compensation made by the Delhi Legal Aid & Advice Board and the Delhi Bar Association cannot be thrown out. These applications are for enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hyper-technical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the Court. If this Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the Court for justice, there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Article 21 should not be entertained. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form. We cannot therefore sustain the preliminary objection raised by Mr. Diwan.

3. The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that Article. We have already had occasion to consider the ambit and coverage of Article 32 in the *Bandhua Mukti Morcha v. Union of India & Ors.* 1984 (2) SCR 67 and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that Article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this court to protect the fundamental rights of the people and for that purpose this court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

4. Thus it was in *S.P. Gupta v. Union of India* 1981 (Supp) SCC 87 that this Court held that "where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened, and any such person or determinate class of person is by reason of poverty or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of the public or social action group can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person of class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons". This court also held in S.P. Gupta's case (supra) as also in the *People's Union for Democratic Rights and Ors. v. Union of India* 1983 (1) SCR 456 and in Bandhua Mukti Morcha's case (supra) that procedure being merely a handmaden of justice it should not stand in the way of access to justice to the weaker sections of Indian humanity and therefore where the poor and the disadvantaged are concerned who are barely asking out a miserable existence with their sweet and soil and who are victims of an exploited society without any access to justice, this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting pro bono publico would suffice to ignite the jurisdiction of this Court. We wholly endorse this statement of the law in regard to the broadening of locus standi and what has come to be known as epistolary jurisdiction.

5. We may point out at this stage that in Bandhua Mukti Morcha's case (supra) some of us apprehending that letters addressed to individual justices may involve the court in frivolous cases and that possibly view could be taken that such letters do not invoke the jurisdiction of the court as a whole, observed that such letters should not be addressed to individual justices of the court but to the Court or to the Chief Justice and his companion judges. We do not think that it would be right to reject a letter addressed to an individual justice of the court merely on the ground that is not addressed to the court or to the Chief Justice and his companion Judges. We must not forget that letters would ordinarily be addressed by poor and disadvantaged persons or by social action groups who may not know the proper form of address. They may know only a particular Judge who comes from their State and they may therefore address the letters to him. If the Court were to insist that the letters must be addressed to the court or to the Chief Justice and his companion Judges, it would exclude from the judicial ken a large number of letters and in the result deny access to justice to the deprived and vulnerable section of the community. We are therefore of the view that even if a letter is addressed to an individual Judge of the court, it should be entertained provided of course it is by or on behalf of a person in custody or on behalf of a woman or a child or a class of deprived or disadvantaged persons. We may point out that now there is no difficulty in entertaining letters addressed to individual justice of the court, because this court has a Public Interest Litigation Cell to which all letters addressed to the court or to the individual justices are forwarded and the staff attached to this Cell examines the letters and it is only after scrutiny by the staff members attached to this Cell that the letters are placed before the Chief Justice and under his direction, they are listed before the Court. We must therefore hold that letters addressed to individual justice of the court should not be rejected merely because they fail to conform to the preferred form of address. Nor should the court adopt a rigid stance that no letters will be entertained unless they are supported by an affidavit. If the court were to insist on an affidavit as a condition of entertaining the letters the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the Court and even the social action groups will find it difficult to approach the court. We may point out that the court has so far been entertaining letters without an affidavit and it is only in a few rare cases that it has been found that the allegations made in the letters were false. But that might happen also in cases where the jurisdiction of the Court is invoked in a regular way.

6. So far as the power of the court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which we may for the sake of convenience call social action litigation, and to appoint Commissions for this purpose, is concerned, we endorse what one of us namely, Bhagwati, J., as he then was, has said in his Judgment in Bandhua Mukti Morcha's case (supra). We need not repeat what has been stated in that judgment. It has our full approval.

7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32 (2) the Court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the Court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha's* case (supra). If the Court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy because then the situation would be that if a fundamental right is threatened to be violated, the Court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the Court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and *ex facie* glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in *Rudul Shah v State of Bihar* (AIR 1983 SC 1086). So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation.

8. The next question which arises for consideration on these applications for compensation is whether Article 21 is available against Shriram which is owned by Delhi Cloth Mills Limited, a public company limited by shares and which is engaged in an industry vital to public interest and with potential to affect the life and health of the people. The issue of availability of Article 21 against a private corporation engaged in an activity which has potential to affect the life and health of the people was vehemently argued by counsel for the applicants and Shriram. It was emphatically contended by counsel for the applicants, with the analogical aid of the American doctrine of State Action and the functional and control test enunciated by this Court in its earlier decisions, that Article 21 was available, as Shriram was carrying on an industry which, according to the Government's own declared industrial policies, was ultimately intended to be carried out by itself, but instead of the Government immediately embarking on that industry, Shriram was permitted to carry it on under the active control and regulation of the Government. Since the Government intended to ultimately carry on this industry and the mode of carrying on the industry could vitally affect public interest, the control of the Government was linked to regulating that aspect of the functioning of the industry which could vitally affect public interest. Special emphasis was laid by counsel for the applicants on the regulatory mechanism provided under the Industries Development and Regulation Act, 1951 where industries are included in the schedule if they vitally affect public interest. Regulatory measures are also to be found in the Bombay Municipal Corporation Act, the Air and Water Pollution Control Acts and now the recent Environment Act, 1986. Counsel for the applicants also pointed to us the sizable aid in loans, land and other facilities granted by the Government to Shriram in carrying on the industry. Taking aid of the American State Action doctrine, it was also argued before us on behalf of the applicants that private activity, if supported, controlled or regulated by the State may get so entwined with governmental activity as to be termed State action and it would then be subject to the same constitutional restraints on the exercise of power as the State.

9. On the other hand, counsel for Shriram cautioned against expanding Article 12 so as to bring within its ambit private corporations. He contended that control or regulation of a private corporation's functions by the State under general statutory law such as the Industries Development and Regulation Act, 1951 is only in exercise of police power of regulation by the State. Such regulation does not convert the activity of the private corporation into that of the State. The activity remains that of the private corporation; the State in its police power only regulates the manner in which it is to be carried on. It was emphasised that control which deems a corporation, an agency of the State, must be of the type where the State controls the management policies of the Corporation, whether by sizable representation on the board of management or by necessity of prior approval of the Government before any new policy of management is adopted or by any other mechanism. Counsel for Shriram also pointed out the in appositeness of the State action doctrine to the Indian situation. He said that in India the control and function test have been evolved in order to determine whether a particular authority is an instrumentality or agency of the State and hence 'other authority' within the meaning of Article 12. Once an authority is deemed to be 'other authority' under Article 12, it is State for the purpose of all its activities and functions and the American functional dichotomy by which some functions of an authority can be termed State action and others private action, cannot operate here. The learned counsel also pointed out that those rights which are specifically intended by the Constitution makers to be available against private parties are so provided in the Constitution specifically such as Articles 17, 23 and 24. Therefore, to so expand Article 12 as to bring within its ambit even private corporations would be against the scheme of the Chapter on fundamental rights.

10. In order to deal with these rival contentions we think it is necessary that we should trace that part of the development of Article 12 where this Court embarked on the path of evolving criteria by which a corporation could be termed 'other authority' under Article 12.

11. In *Rajasthan Electricity Board v Mohan Lal* (1967 (3) SCR 377) this Court was called upon to consider whether the Rajasthan Electricity Board was an 'authority' within the meaning of the expression 'other authorities' in Article 12. Bhargava, J. who delivered the judgment of the majority pointed out that the expression 'other authorities' in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law. The learned Judge also said that if any body of persons has authority to issue directions, the disobedience of which would be punishable as a criminal offence, that would be an indication that the concerned authority is 'State'. Shah, J., who delivered a separate judgment agreeing with the conclusion reached by the majority, preferred to give a slightly different meaning to the expression 'other authorities.' He said that authorities, constitutional or statutory, would fall within the expression "other authorities" only if they are invested with the sovereign power of the State, namely, the power to make rules and regulations which have the force of law. The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the expression "other authorities" if it has been invested with statutory powers to issue binding directions to third parties, the disobedience of which would entail penal consequences or it has the sovereign power to make rules and regulations having the force of law.

12. This test was followed by Ray, CJI, in *Sukhdev v Bhagat Ram* (1975(1) SCC 421). Mathew J., however, in the same case propounded a broader test. The learned Judge emphasised that the concept of 'State' had undergone drastic changes in recent years and today 'State' could not be conceived of simply as a coercive machinery wielding the thunderbolt of authority; rather it has to be viewed mainly as a service corporation. He expanded on this dictum by stating that the emerging principle appears to be that a public corporation being an instrumentality or agency of the 'State' is subject to the same constitutional limitations as the 'State' itself. The preconditions of this are two, namely, that the corporation is the creation of the 'State' and that there is existence of power in the corporation to invade the constitutional rights of the individual. This Court in *Ramanna Shetty v International Airport Authority* (1979(3) SCR 1014) accepted and adopted the rationale of instrumentality or agency of State put forward by Mathew, J., and spelt out certain criteria with whose aid such an inference could be made. However, before we come to these criterias we think it necessary to refer to the concern operating behind the exposition of the broader test by Justice Mathew which is of equal relevance to us today, especially considering the fact that the definition under Article 12 is an inclusive and not an exhaustive definition. That concern is the need to curb arbitrary and unregulated power wherever and howsoever reposed.

13. In *Ramanna D. Shetty v. International Airport Authority* (supra) this Court deliberating on the criteria on the basis of which to determine whether a corporation is acting as instrumentality or agency of Government said that it was not possible to formulate an all inclusive or exhaustive test which would adequately answer this question. There is no out and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not. The Court said whilst formulating the criteria that analogical aid can be taken from the concept of State Action as developed in the United States wherein the U.S. Courts have suggested that a private agency if supported by extra-ordinary assistance given by the State may be subject to the same constitutional limitations as the State. It was pointed out that the State's general common law and statutory structure under which its people carry on their private affairs, own property and enter into contracts, each enjoying equality in terms of legal capacity, is not such assistance as would transform private conduct into State Action. "But if extensive and unusual financial assistance is given and the purpose of such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of the Government".

14. On the question of State control, the Court in R.D. Shetty' case (supra) clarified that some control by the State would not be determinative of the question, since the State has considerable measure of control under its police power over all types of business organisations. But a finding of State financial support plus an unusual degree of control over the management and policies of the corporation might lead to the characterisation of the operation as State Action.

15. Whilst deliberating on the functional criteria namely, that the corporation is carrying out a governmental function, the Court emphasised that classification of a function as governmental today should not be done on earlier day perceptions but on what the State today views as an indispensable part of its activities, for the State may deem it as essential to its economy that it own and operate a railroad, a mill or an irrigation system as it does to own and operate bridges, street lights or a sewage disposal plant. The Court also reiterated in R.D. Shetty's case (supra) what was pointed out by Mathew, J in *Sukhdev v Bhagatram* that "institutions engaged in matters of high public interest or public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions."

16. The above discussion was rounded off by the Court in ~~R.D. Shetty~~'s case (supra) by enumerating the following five factors namely, (1) financial assistance given by the State and magnitude of such assistance (2) any other form of assistance whether of the usual kind of extraordinary (3) control of management and policies of the corporation by the State-nature and extent of control (4) State conferred or State protected monopoly status and (5) functions carried out by the corporation, whether public functions closely related to governmental functions, as relevant criteria for determining whether a corporation is an instrumentality or agency of the State or not, though the Court took care to point out that the enumeration was not exhaustive and that it was the aggregate or cumulative effect of all the relevant factors that must be taken as controlling.

17. The criteria evolved by this Court in Ramanna Shetty's case (supra) were applied by this Court in *Ajay Hasis v Khalid Mujib* (1981 (2) SCR 79) where it was further emphasised that:

> "Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool for constitutional law, must seek the substance and not the form. Now it is obvious that the Government may through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of judicial persons to carry out its functions. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality work for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government... (for if the Government acting through its officers is subject to certain constitutional limitations it must follow a fortiorari that the Government acting through the instrumentality or agency of a corporation should be equality subject to the same limitations".

On the canon of construction to be adopted for interpreting constitutional guarantees the Court pointed out:

> ..."constitutional guarantees... should not be allowed to be emasculated in their application by a narrow and constructed judicial interpretation. The Courts should be anxious to enlarge the scope and width of the fundamental rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities to the basic obligation of the fundamental rights."

In this case the Court also set at rest the controversy as to whether the manner in which a corporation is brought into existence had any relevance to the question whether it is a State instrumentality or agency. The Court said that it is immaterial for the purpose of determining whether a corporation is an instrumentality or agency of the State or not whether it is created by a Statute or under a statute : "the inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute". It would come within the ambit of Article 12, if it is found to an instrumentality or agency of the State on a proper assessment of the relevant factors.

18. It will thus be seen that this Court has not permitted the corporate device to be utilised as a barrier ousting the constitutional control of the fundamental rights. Rather the Court has held :

> "It is dangerous to exonerate corporations from the need to have constitutional conscience, and so that interpretation, language permitting which makes governmental agencies whatever their mein amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an imperium in imperie". *Som Prakash v Union of India* 1981 (2) SCR 18.

19. Taking the above exposition as our guideline, we must now proceed to examine whether a private corporation such as Shriram comes within the ambit of Article 12 so as to be amenable to the discipline of Article 21.

20. In order to assess the functional role allocated to private corporation engaged in the manufacture of chemicals and fertilisers, we need to examine the Industrial policy of the Government and see the public interest importance given by the State to the activity carried on by such private corporation.

21. Under the Industrial Policy Resolution, 1956 industries were classified into three categories having regard to the part which the State would play in each of them. The first category was to be the exclusive responsibility of the State. The second category comprised those industries which would be progressively State owned and in which the State would therefore generally take the initiative in establishing new undertakings but in which private enterprise would also be expected to supplement the effort of the State by promoting and developing undertakings either on its own or with State participation. The third category would include all the remaining industries and their future development would general be left to the initiative and enterprise of the private sector. Schedule B to the Resolution enumerated the industries.

22. Appendix 1 to the Industrial Policy Resolution, 1948 dealing with the problem of State participation in industry and the conditions in which private enterprise should be allowed to operate stated that there can be no doubt that the State must play a progressively active role in the development of industries. However under the present conditions, the mechanism and resources of the State may not permit it to function forthwith in Industry as widely as may be desirable. The Policy declared that for some time to come, the State could contribute more quickly to the increase of national wealth by expanding its present activities wherever it is already operating and by concentrating one new units of production in other fields.

23. On these considerations the Government decided that the manufacture of arms and ammunition, the production and control of atomic energy and the ownership and management of railway transport would be the exclusive monopoly of the Central Government. The establishment of new undertakings in Coal, Iron and Steel, Aircraft manufacture, Ship building, manufacture of telephone, telegraph and wireless apparatus and mineral oil were to be the exclusive responsibility of the State except where in national interest the State itself finds it necessary to secure the co-operation of private enterprise subject to control of the Central Government.

24. The policy resolution also made mention of certain basic industries of importance the planning and regulation of which by the Central Government was found necessary in national interest. Among the eighteen industries so mentioned as requiring such Central control, heavy chemicals and fertilisers stood included.

25. In order to carry out the objective of the Policy Resolutions the Industries (Development and Regulation) Act of 1951 was enacted which, according to its objects and reasons, brought under central control the development and regulation of a number of important industries the activities of which affect the country as a whole and the development of which must be governed by economic factors of all India import. Section 2 of the Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. Chemicals and Fertilisers find a place in the First Schedule as Items 19 and 18 respectively.

26. If an analysis of the declaration in the Policy Resolutions and the Act is undertaken, we find that the activity of producing chemicals and fertilisers is deemed by the State to be an industry of vital public interest, whose public import necessitates that the activity should be ultimately carried out by the State itself, though in the interim period with State support and State control, private corporations may also be permitted to supplement the State effort. The argument of the applicants on the basis of this premise was that in view of this declared industrial policy of the State, even private corporations manufacturing chemicals and fertilisers can be said to be engaged in activities which are so fundamental to the Society as to be necessarily considered government functions. *(Sukhdev v Bhagat Ram, Ramanna Shetty and Ajay Hasia* (Supra).

27. It was pointed out on behalf of the applicants that as Shriram is registered under the Industries Development and Regulation Act 1951, its activities are subjects to extensive and detailed control and supervision by the Government. Under the Act a licence is necessary for the establishment of a new industrial undertaking or expansion of capacity or manufacture of a new article by an existing industrial undertaking carrying on any of the Scheduled Industries included in the First Schedule of the Act. By refusing licence for a particular unit, the Government can prevent over concentration in a particular region or over-investment in a particular industry. Moreover, by its power to specify the capacity in the licence it can also prevent over-development of a particular industry if it has already reached target capacity. Section 18 G of the Act empowers the Government to control the supply, distribution, price etc. of the articles manufactured by a scheduled industry and under Section 18 A Government can assume management and control of an industrial undertaking engaged in a scheduled industry if after investigation it is found that the affairs of the undertaking are being managed in a manner detrimental to public interest and under Section 18AA in certain emergent cases, take-over is allowed even without investigation. Since Shriram is carrying on a scheduled industry, it is subject to this stringent system of registration and licensing. It is also amenable to various directions that may be issued by the Government from time to time and it is subject to the exercise of the powers of the Government under Sections 18 A, 18 and 18 G.

28. Shriram is required to obtain a licence under the Factories Act and is subject to the directions and orders of the authorities under the Act. It is also required to obtain a licence for its manufacturing activities from the Municipal authorities under the Delhi Municipal Act 1957. It is subject to extensive environment regulation under the Water (Prevention and Control of Pollution) Act 1974 and as the factory is situated in an air pollution control area, it is also subject to the regulation of the Air (Prevention and Control of Pollution) Act 1981. It is true that control is not exercised by the Government in relation to the internal management policies of the

Company. However, the control is exercised on all such activities of Shriram which can jeopardize public interest. This functional control is of special significance as it is the potentiality of the fertilizer industry to adversely affect the health and safety of the community and its being impregnated with public interest which perhaps dictated the policy decision of the Government to ultimately operate this industry exclusively and invited functional control. Along with this extensive functional control, we find that Shriram also receives sizable assistance in the shape of loans and overdrafts running into several crores of rupees from the Government through various agencies. Moreover, Shriram is engaged in the manufacture of caustic soda, chlorine etc. Its various units are set up in a single complex surrounded by thickly populated colonies. Chlorine gas is admittedly dangerous to life and health. If the gas escapes either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well-being of the people living in the vicinity can be seriously affected. Thus Shriram is engaged in an activity which has the potential to invade the right to life of large sections of people. The question is whether these factors are cumulatively sufficient to bring Shriram within the ambit of Article 12. Prima facie it is arguable that when the States' power as economic agent, economic entrepreneur and allocater of economic benefits is subject to the limitations of fundamental rights, *(Vide Eurasian Equipment and Chemicals Ltd. v State of West Bengal* (1975) 2 SCR 674, *Rashbehari Panda v State* (1969) 3 SCR 374, *Ramanna Shetty v International Airport Authority* (supra) and *Kasturilal Reddy v State of Jammu & Kashmir* (1980) 3 SCR 1338), why should a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, not be subject to the same limitations. But we do not propose to decide this question and make any definite pronouncement upon it for reasons which we shall point out later in the course of this judgment.

29. We were, during the course of arguments, addressed at great length by counsel on both sides on the American doctrine of State action. The learned counsel elaborately traced the evolution of this doctrine in its parent country. We are aware that in America since the Fourteenth Amendment is available only against the State, the Courts, in order to thwart racial discrimination by private parties, devised the theory of State action under which it was held that wherever private activity was aided,facilitated or supported by the State in a significant measure, such activity took the colour of State action and was subject to the constitutional limitations of the Fourteenth Amendment. This historical context in which the doctrine of State action evolved in the United States is irrelevant for our purpose especially since we have Article 15(2) in our Constitution. But it is the principle behind the doctrine of State aid, control and regulation so impregnating a private activity as to give it the colour of State action that is of interest to us and that also to the limited extent to which it can be Indianized and harmoniously blended with our constitutional jurisprudence. That we in no way consider ourselves bound by American exposition of constitutional law is well demonstrated by the fact that in Ramanna Shetty (supra) this Court preferred the minority opinion of Douglas, J. in *Jackson v Metropolitan Edison Company* 42 L.ed (2d) 477 as against the majority opinion of Rehnquist, J. And again in *Air India v Nergesh Mirza* (1983) 1 SCR 438 this Court whilst preferring the minority view in General

Electric Company Martha v Gilbert 50 L.ed (2d) 343 said that the provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution and whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured, because the social conditions in our country are different. The learned counsel for Shriram stressed the in appositeness of the doctrine of State action in the Indian context because, according to him, once an authority is brought within the purview of Article 12, it is State for all intents and purposes and the functional dichotomy in America where certain activities of the same authority may be characterised as State action and others as private action cannot be applied here in India. But so far as this argument is concerned, we must demur to it and point out that it is not correct to say that in India once a corporation is deemed to be 'authority', it would be subject to the constitutional limitation of fundamental rights in the performance of all its functions and that the appellation of 'authority' would stick to such corporation, irrespective of the functional context.

30. Before we part with this topic, we may point out that this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human-rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the raison d'etre of creating corporations but to advance the human rights jurisprudence. Prima Facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well-founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. Whenever a new advance is made in the field of human rights, apprehension is always expressed by the status quoist that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in Ramanna Shetty's case (supra) brought public sector corporations within the scope and ambit of Article 12 and subjected them to the discipline of fundamental rights. Such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the Court from widening the scope of human rights and expanding their reach ambit, if otherwise it is possible to do so without doing violence to the language of the constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. But we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on 15th December 1986 and we are called upon to deliver our judgment within a period of four days, on 19th December 1986. We are therefore of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for proper and detailed consideration at a later stage if it becomes necessary to do so.

31. We must also dealt with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inheriently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in *Rylands v Fletcher* apply or is there any other principle on which the liability can be determined. The rule in *Rylands v Fletcher* was evolved in the year 1866 and it provides that a person who for his own purposes being on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is *prima facie* liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural use of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is presently the consent of the person injured or in certain cases where there is statutory authority. *Vide* Halsburry Laws of England, Vol. 45 para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme. This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in this context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot aford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in *Rylands v Fletcher* as is developed in England recognises certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concommitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands v* Fletcher (supra).

32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

33. Since we are not deciding the question as to whether Shriram is an authority within the meaning of Article 12 so as to be subjected to the discipline of the fundamental right under Article 21, we do not think it would be justified in setting up a special machinery for investigation of the claims for compensation made by those who allege that they have been the victims of oleum gas escape. But we would direct that Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from today and the Delhi Administration is directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more Judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of. So far as the issue of relocation and other issues are concerned the writ petition will come up for hearing on 3rd February, 1987.

SCALE (PIL) 1981-97 1531
SHEELA BARSE *Appellant*
VS
THE SECRETARY, CHILDREN AID SOCIETY & OTHERS *Respondents*
CORAM: P.N. BHAGWATI, CJI. AND R.S. PATHAK, J.

PUBLIC INTEREST LITIGATION — RIGHTS OF CHILDREN — CONSTITUTION — ARTS. 12, 21 & 24 r.w. BOMBAY CHILDREN'S ACT, 1948 r.w. BOMBAY PUBLIC TRUSTS ACT, 1950 — New observation homes maintained by Children's Aid Society, Bombay — Grievances made by the petitioner about its working — Expunging of observations made against her by High Court — Disposing the appeal, Held,

A. The Juvenile Court has to be manned by a Judicial Officer with some special training. Creation of a Court with usual Judicial Officer and labelling it as Juvenile Court does not serve the requirement of the statute. If that were so, the statute have no necessity of providing a Juvenile Court. The statutory scheme contemplates a judicial officer of a different type with a more sensitive approach-oriented outlook. Without these any Judicial Officer would, indeed, not be competent to handle the special probiem of children (Para 10).

B. The respondent-Society should have been treated as a State within the meaning of Article 12 as it is undoubtedly an instrumentality of the State on the basis of the test laid down by this Court. The respondent-Society has, therefore, to regulate its activities not only in accordance with the statutory requirements of the Constitutional provisions in Articles 21 and 24 as also the Directive Principles of the State Policy. (Para 12).

C. The State of Maharashtra to take prompt action to strictly enforce the law, act up to the requirements of the constitutional obligations and proceed to implement the directions given by the High Court as also by us in this judgment. (Para 12).

D. The High Court should have borne in mind that the appellant was not a lawyer and was not acquainted with the procedure followed in the Court. There was, therefore, no need to make those observations. The Court directed that the observations criticising the appellant may be deleted (Para 14).

Bhagwati, CJI.— In this appeal by special leave the appellant who is a freelance journalist by profession and a Member of the Maharashtra State Legal Aid Advice Committee, seeks to challenge the judgment of the Bombay High Court delivered on 4th February 1985 on a writ petition filed by her.

2. In the writ petition she made grievance

Judgment dated December 20, 1986 in C.A. No. 300 of 1985. [1986(2) SCALE 1234] about the working of the New Observation Home located at Mankhurd which is maintained and managed by the Children's Aid Society, Bombay. According to her, the Children's Aid Society is registered under the Societies Registration Act, 1860 and has also been treated as a Public Trust under the Bombay Public Trust Act of 1950. The Society was founded on 1st May, 1926. The Chief Minister of Maharashtra State is the ex-officio President and the Minister for Social Welfare is the Vice-President of the Governing Council of the Society. The said Society receives grants from the State. It has set up a Remand Home at Umerkhade within Bombay area and it is now run as an Observation Home under the provisions of the Bombay Children's Act, 1948 (hereinafter referred to as 'the Act'). The Society runs three observation homes - one at Umerkhadi established in 1927, the second at Mankhurd established in 1960 and the third, the new Observation Home also at Mankhurd. The appellant's letter of 22nd August, 1984 was treated as writ petition by the High Court wherein the grievances made by the petitioner were of four types as set out by the High Court in paragraph 23 of its judgment:-

> (1) Delay in repatriation or restoration of children to their parents in respect of whom orders for repatriation were made by the Juvenile Court;
>
> (2) Non application of mind in the matter of taking children into custody and directing production before the Juvenile Court;
>
> (3) Absence of proper follow-up action after admission of the children in the Observation Homes, in particular, grievance was made that the Child Welfare Officers were not performing their duties and such failure let to continued detention of children without any justification; and
>
> (4) Detention in such circumstances was illegal and the condition very often resulted in harassment to the children so detained.

3. The Society appeared before the High Court and filed counter-affidavits denying allegations of facts raised in the writ petition and both parties produced documents. The High Court went into the matter at a considerable length, found some of the allegations to be without any justification and yet others were accepted. In paragraphs 44 and 45 of the impugned judgment, the High Court colated its directions and recommended thus:

> "(A)(i) A copy of the repatriation order passed by the Juvenile Court should always be sent to the Juvenile Aid Police Unit as it is now sent to the Observation Home. The order should specify that the police should implement that order within a week. What should be done by the police and the observation home in case the order is not implemented is mentioned in paragraph 27 of this judgment;
>
> (ii) The possibility of detailing sufficient number of personnel in the police department for the work connected with the Bombay Children Act should be speedily considered (Paragraph 28);
>
> (iii) The Government should immediately review the resolution dated 2nd September, 1965 issued by the Education and Social Welfare Department, which fixes the allowances for escort duties done by voluntary organisations (paragraph 29);
>
> (iv) It is also recommended that the Government should consider the constitution of an Escort Service which can consist of police personnel, youth volunteers and Government servants (latter part of paragraph 29);
>
> (v) The observation homes and the JAPU should not wait for a sufficient number of children being ready for being escorted

before implementing the orders passed by the Juvenile Court (Paragraph 30).

(B) (i) The Magistrate presiding over the Juvenile Court should insist, in the case of local children, that the police must trace the parents of the children within a maximum period of 48 hours and take steps to restore them to their parents (paragraphs 32 and 33);

(ii) Any tendency, if there is one, on the part of the personnel of JAPU of fulfilling the quota for a month should be firmly put down; (paragraph 32);

4. In this Court, the appellant has maintained that the High Court failed to consider several of the contentions advanced by her at the hearing of the writ petition, namely, (1) children while staying in the Observation Homes are forced to work without remuneration and are engaged in hazardous employment. There were instances where observation homes assigned the work to private entrepreneurs with a view to making financial gains for the Society. In support of this circumstances, reliance was placed upon an affidavit on behalf of the respondent filed in the High Court. The appellant next contended, relying on the balance-sheet of the Society forming part of the annual report, it has been contended before the High Court that the Society was making a profit of about Rupees four lakhs a year by engaging children into it to discharge various types of labour without making any payment to them. According to the Appellant, the shortfall in follow-up action has not been properly considered by the High Court and the directions given by it are inadequate. In giving the directions, the High Court lost sight of mandatory provisions of the Children's Act as also the provisions in Articles 21 and 24 of the Constitution and the provisions contained in the Directive Principles of the State Policy. It is the submission of the appellant that Respondent No.1 Society should have been treated as a State and not as a voluntary organisation. In view of the materials placed on the record about the constitution and manning of the Society as also funding thereof, according to the appellant, the Court should have appreciated the position that it was the protector of the helpless children living within its jurisdiction and such care and attention and provisions of amenities as were necessary for their proper upkeep and bringing up should have been ensured by the judgment of the High Court. She also contended that the directions of the High Court in the matter of illegal detention of children was not adequate.

5. Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realised. In 1959, the Declaration of all the rights of the child adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights 1966. The importance of the child has been appropriately recognised. India as a party to these International Charters having rectified the Declarations, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The Children's Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased.

6. The problem is such that it does not brooke delay. There is no unanimity of the problem also though there may be a pattern, every individual case is likely to pose a situation very often peculiar to itself. A set pattern would not meet the situation, and yield the desired results. What is, therefore, necessary is to appropriately train all the functionaries under the statute, create in them the necessary bias and motivate them adequately to arise to the demand of every sitaution. We appreciate that this is a difficult job but an intricate situation requiring delicate handling with full understanding of the probelm would definitely require appropriate manning of the machinery. More than a mite of the grievances made by the appellant could not have been there if there had been competent handling of the situation. It is very much necessary, therefore, that officers at the different level called upon to perform statutory duties by exercising powers conferred under the statute have to be given the prorper training and only when they had the requisite capacity in them should they be called upon to handle the situation.

7. Gerontocracy in silence manner indicated that like a young plant a child takes roots in the environment where it is placed. Howsoever good the breed be if the sapling is placed on a wrong setting or an unwarranted place, there would not be the desired growth. Same is the situation with the humane child. The Child Welfare Officer (Probation) as also the Superintendent of the Observation Home must be duly motivated. They must have the working knowledge in pyschology and have a sense of keen observation on their good functioning would depend the efficacy of the scheme.

8. We are not inclined to agree with the contention advanced by the appellant that for employment in children's home, the children would be given remuneration. Children in Observation Homes should not be made to stay long and as long as they are there, they should be kept occupied and the occupation should be congenial and intended to bring about adaptability in life aimed at bringing about a self-confidence and picking of humane virtues.

9. We are not inclined to agree with the supervision over the Homes. Indeed, without this aspect being assured, the conditions of these Homes could not improve. Dedicated workers have to be found out, proper training to them has to be imparted and such people alone should be introduced into the children homes.

10. The Juvenile Court has to be manned by a Judicial Officer with some special training. Creation of a Court with usual Judicial Officer and labelling it as Juvenile Court does not serve the requirement of the statute. If that were so, the statute have no necessity of providing a Juvenile Court. The statutory scheme contemplates a judicial officer of a different type with a more sensitive approach-oriented outlook. Without these any Judicial Officer would, indeed, not be competent to handle the special problem of children.

11. In the recent years, children and their problems have been receiving attention both of the Government as also of the society but be must say that the problems are of such enormous magnitude that all that has been done till now is not sufficient. If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today's children will be the leaders of tomorrow who will hold the country's banner high and maintain the prestige of the Nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the Government of the day. A problem child is indeed a negative factor. Every society must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the society when they grow up.

12. We agree with the appellant that the respondent-Society should have been treated as a State within the meaning of Article 12 as it is undoubtedly an instrumentality of the State on the basis of the test laid down by this Court. The respondent Society has, therefore, to regulate its activities not only in accordance with the statutory requirements but also act in a manner satisfying the requirements of the Constitutional provisions in Articles 21 and 24 as also the Directive Principles of the State Policy.

13. We would direct the State of Maharashtra to take prompt action to strictly enforce the law, act up to the requirements of the constitutional obligations and proceed to implement the directions given by the High Court as also by us in this judgment. We direct that the State of Maharashtra shall pay to the appellant costs fixed at Rs. 5000/-.

14. Before we part with this case, we may refer to a grievance made by the appellant in regard to some of the observations made by the High Court relating to her stand in the writ petition. The appellant pointed out that these observations were disparaging and the High court ought not to have made the same. We may point out even at the cost of reiteration that the appellant is a social worker and a freelance journalist and she brought the matter before the High Court being genuinely aggrieved on account of non-implementation of the statute and being moved by the condition of the children in the New Observation Home. The appellant brought the writ petition before the High Court in larger public interest and for the purpose of securing implementation of the law. We do not think that the observation made by the High Court against her were justified. In fact, the High Court accepted most of the complaints made by her and proceeded to give relief by way of directions and recommendations. The High Court should have borne in mind that the appellant was not a lawyer and was not acquainted with the procedure followed in the Court. There was, therefore, no need to make those observations. We would, therefore, direct that the observations critising the appellant may be deleted.

SCALE (PIL) 1981-97 1535

SMT. NILABATI BEHERA ALIAS LALITA BEHERA *Petitioner*

VS

THE STATE OF ORISSA & OTHERS *Respondents*

CORAM: J.S. VERMA, A.S. ANAND AND N. VENKATACHALA, JJ.

PUBLIC INTEREST LITIGATION — CUSTODIAL DEATH — CONSTITUTION — ARTICLE 21, 32 & 226 — Liability of the State for payment of compensation — Whether it is a case of custodial death as alleged by the petitioner? — Whether an award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort — Allowing the writ petition, Held, the burden is, therefore, clearly on the respondents to explain how Suman Behera sustained those injuries, which caused his death. Unless a plausible explanation

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Judgment dated March 24, 1993 in W.P. (C) No. 488 of 1988. [1993(2) SCALE 309]

is given by the respondents which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted to Suman Behera in police custody resulting in his death, for which the respondents are responsible and liable — Further Held, that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution — If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contraventional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the havenots, who are not possessed of the wherewithal for enforcement of their rights in private law — Court awarded compensation of Rs. 1,50,000/-.

Referred: Rudul Sah vs state of Bihar and Another, (1983) 3 S.C.R. 508; Sebastian M. Hongray v. Union of India and Others, (1984) 1 S.C.R. 904, (1984) 3 S.C.R. 544; Bhim Singh vs State of J&K (1984) Supp) S.C.C. 504, (1985) 4 S.C.C. 677; Saheli, A Women's Resources Centre and Others v. Commissioner of Police, Delhi Police Headquarters and Others, (1990) 1 S.C.C. 422; State of Maharashtra and Others v Ravikant S. Patil, (1991) 2 S.C.C. 373; Sebastian M. Hongray v. Union of India & Ors. (II), (1984) 3 S.C.R. 544; Bhim Singh vs State of J&K and Others (1985) 4 S.C.C. 677; Kasturilal Ralia Ram Jain vs The State of Uttar Pradesh, (1965) 1 S.C.R. 375; Maharaj v. Attorney-General of Trinidad and Tobago (No.2), (1978) 3 All ER 670; Khatri and Others (II) vs State of Bihar and Others, (1981) 1 S.C.C. 627; Khatri and Others (IV) vs State of Bihar and Others, (1981) 2 S.C.C. 493; Union Carbide Corporation and Others vs Union of India and Others, (1991) 4 S.C.C. 584.

Verma, J.— A letter dated 14.9.1988 sent to this Court by Smt. Nilabati Behera alias Lalita Behera, was treated as a Writ Petition under Article 32 of the Constitution for determining the claim of compensation made therein consequent upon the death of petitioner's son Suman Behera, aged about 22 years, in police custody. The said Suman Behera was taken from his home in police custody at about 8 a.m. on 1.12.1987 by respondent No. 6, Sarat Chandra Barik, Assistant Sub-Inspector of Police of Jaraikela Police Outpost under Police Station Bisra, Distt. Sundergarh in Orissa, in connection with the investigation of an offence of theft and detained at the Police Outpost. At about

2 p.m. the next day on 2.12.1987, the petitioner came to know that the dead body of her son Suman Behera was found on the railway track near a bridge at some distance from the Jaraikela railway station. There were multiple injuries on the body of Suman Behera when it was found and obviously his death was unnatural, caused by those injuries. The allegation made is that it is a case of custodial death since Suman Behera died as a result of the multiple injuries inflicted to him while he was in police custody; and thereafter his dead body was thrown on the railway track. The prayer made in the petition is for award of compensation to the petitioner, the mother of Suman Behera, for contravention of the fundamental right to life guaranteed under Article 21 of the Constitution.

2. The State of Orissa and its police officers, including Sarat Chandra Barik, Assistant Sub-Inspector of Police and Constable No. 127, Chhabil Kujur of Police Outpost Jeraikela, Police Station Bisra, are impleaded as respondents in this petition. The defence of the respondents is that Suman Behera managed to escape from police custody at about 3 a.m. on the night between the 1st and 2nd December, 1987 from the Police Outpost Jeraikela, where he was detained and guarded by Police Constable Chhabil Kujur; he could not be apprehended thereafter in spite of a search; and the dead body of Suman Behera was found on the railway track the next day with multiple injuries which indicated that he was run over by a passing train after he had escaped from police custody. In short, on this basis the allegation of custodial death was denied and consequently the respondents' responsibility for the unnatural death of Suman Behera.

3. In view of the controversy relating to the cause of death of Suman Behera, a direction was given by this Court on 4.3.1991 to the District Judge, Sundergarh in Orissa, to hold an inquiry into the matter and submit a report. The parties were directed to appear before the District Judge and lead the evidence on which they rely. Accordingly, evidence was led by the parties and the District Judge has submitted the Inquiry Report dated 4.9.1991 containing his finding based on that evidence that Suman Behera had died on account of multiple injuries inflicted to him while he was in police custody at the Policy Outpost Jeraikela. The correctness of this finding and Report of the District Judge, being disputed by the respondents, the matter was examined afresh by us in the light of the objections raised to the Inquiry Report.

4. The admitted facts are, that Suman Behera was taken in police custody on 1.12.1987 at 8 a.m. and he was found dead the next day on the railway track near the Police Outpost Jeraikela, without being released from custody, and his death was unnatural, caused by multiple injuries sustained by him. The burden is, therefore, clearly on the respondents to explain how Suman Behera sustained those injuries which caused his death. Unless a plausible explanation is given by the respondents which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted to Suman Behera in police custody resulting in his death, for which the respondents are responsible and liable.

5. To avoid this obvious and logical inference of custodial death, the learned Additional Solicitor General relied on the respondents' defence that Suman Behera had managed to escape from police custody at about 3 a.m. on the night between the 1st and 2nd December, 1987 and it was likely that he was run over by a passing train when he sustained the fatal injuries. The evidence adduced by the respondents is relied on by the learned Additional Solicitor General to support this defence and to contend that the responsibility of the respondents for the safety of Suman Behera came to an end the moment Suman Behera escaped from police custody. The learned Additional Solicitor General, however, rightly does not dispute the liability of the State for payment of compensation in this proceeding for violation of the fundamental right to life under Article 21, in case it is found to be a custodial death. The argument is that the factual foundation for such a liability of the State is absent. Shri M.S. Ganesh, who appeared as *amicus curiae* for the petitioner, however, contended that the evidence adduced during the inquiry does not support the defence of respondents and there is no reason to reject the finding of the learned District Judge that Suman Behera died in police custody as a result of injuries inflicted to him.

6. The first question is: Whether it is a case of custodial death as alleged by the petitioner? The admitted facts are: Suman Behera was taken in police custody at about 8 a.m. on 1.12.1987 by Sarat Chandra Barik, Asstt. Sub-Inspector of Police, during investigation of an offence of theft in the village and was detained at Police Outpost Jeraikela; Suman Behera and Mahi Sethi, another accused, were handcuffed, tied together and kept in custody at the police station; Suman Behera's mother, the petitioner, and grandmother went to the Police Outpost at about 8. p.m. with food for Suman Behera which he ate and thereafter these women came away while Suman Behera continued to remain in police custody; Police Constable Chhabil Kujur and some other persons were present at the Police Outpost that night; and the dead body of Suman Behera with a handcuff and multiple injuries was found lying on the railway track at Kilometer No. 385/29 between Jeraikela and Bhalulata railway stations on the morning of 2.12.1987. It is significant that there is no cogent independent evidence of any search made by the policy to apprehend Suman Behera, if the defence of his escape from police custody be true. On the contrary, after discovery of the dead body on the railway track in the morning by some railwaymen, it was much later in the day that the police reached the spot to take charge of the dead body. This conduct of the concerned police officers is also a significant circumstance to asses credibility of the defence version.

7. Before discussing the other evidence adduced by the parties during the inquiry, reference may be made to the injuries found on the dead body of Suman Behera during post-mortem. These injuries were the following:-

"*External injuries*

1) Laceration over with margin of damaged face.
2) Laceration of size - 3"x2" over the left temporal region upto bone.
3) Laceration 2" above mastoid process on the rightside of size 1 1/2" x 1/4 bone exposed.
4) Laceration on the forehead left side of size 1 1/2"x1/4" upto bone in the mid-line on the forehead 1/2"x1/4" bone deep on the left lateral to it 1"x1/4" bone exposed.
5) Laceration 1"x1/2" on the anterior aspect of middle of left arm, fractured bone protruding.
6) Laceration 1"x1/2 x 1/2" on medical aspect of left thigh 4" above the knee joint.
7) Laceration 1/2" x 1/2" x 1/2" over left knee joint.
8) Laceration 1"x1/2"x1/2" on the medial aspect of right knee joint.
9) Laceration 1"x1/2"x½ 'on the posterior aspect of left leg, 4" below knee joint.
10) Laceration 1" x 1/4" x 1/2" on the plantar aspect of 3rd and 4th toe of right side.

11) Laceration of 1"x1/4"x1/2" on the dorsum of left foot.

Injury on the neck

1) Bruises of size 3" x 1" obliquely alongwith sternocleidomastoid muscle 1" above the clavical left side (2) lateral to this 2"x1" bruise (3) and 1"x1" above the clavical left side (4) posterial aspect of the neck 1"x1" obliquely placed right to mid line.

Right shoulder

a) Bruise 2" x 2", 1" above the right scapula.
b) Bruise 1" x 1" on the tip of right shoulder.
c) Bruise on the dorsum of right palm 2" x1".
d) Bruise extenses surface of forearm left side 4" x1".
e) Bruise on right elbow 4"x1".
f) Bruise on the dorsum of left palm 2" x1".
g) Bruise over left patella 2" x 1".
h) Bruise 1" above left patella 1"x1".
i) Bruise on the right illiac spine 1"x1/2".
j) Bruise over left scapula 4"x1".
k) Bruise 1" below right scapula 5"x1".
l) Bruise 3" medial to inferior angle of right scapula 2"x1".
m) Bruise 2" below left scapula of size 4"x2".
n) Bruise 2"x6" below 12th rib left side.
o) Bruise 4"x2" on the left lumber region.
p) Bruise on the buttock of left side 3"x2".
q) On dissection found.

1) Fracture of skull on right side parietal and occipital bone 6" length.
2) Fracture of frontal bone below laceration 2" depressed fracture.
3) Fracture of left temporal bone 2" in length below external injury No. 2. i.e. laceration 2" above left mastoid process.
4) Membrane ruptured below depressed fracture, brain matter protruding through the membrane.
5) Intracraneal haemorrhage present.
6) Brain lacerated below external injury No. 3, 1"x1/2"x1/2".
7) Bone chips present on temporal surface of both sides.
8) Fracture of left humerous 3" above elbow.
9) Fracture of left femur 3" above knee joint.
10) Fracture mendible at the angle mendible both sides.
11) Fracture of maxillary.

The face was completely damaged, eye ball present, nose lips, cheeks absent. Maxila and a portion of mendible absent. No injury was present on the front side of body trunk. There is rupture and laceration of brain."

8. The doctor deposed that all the injuries were caused by hard and blunt object; the injuries on the face and left temporal region were post-mortem while the rest were ante-mortem. The doctor excluded the possibility of the injuries resulting from dragging of the body by a running train and stated that all the ante-mortem injuries could be caused by lathi blows. It was further stated by the doctor that while all the injuries could not be caused in a train accident, it was possible to cause all the injuries by lathi blows. Thus, the medical evidence comprising the testimony of the doctor, who conducted the post-mortem, excludes the possibility of all the injuries to Suman Behera being caused in a train accident while indicating that all of them could result from the merciless beating given to him. The learned Additional Solicitor General placed strong reliance on the written opinion of Dr. K.K. Mishra, Professor & Head of the Department of Forensic Medicine, Medical College, Cuttack, given on 15.2.1988 on a reference made to him wherein he stated on the basis of the documents that the injuries found on the dead body of Suman Behera could have been caused by rolling on the railway track in-between the rail and by coming into forceful contact with projecting part of the moving train/engine. While adding that it did not appear to be a case of suicide, he indicated that there was more likelihood of accidental fall on the railway track followed by the running engine/train. In our view, the opinion of Dr. K.K. Mishra, not examined as a witness, is not of much assistance and does not reduce the weight of the testimony of the doctor who conducted the post-mortem and deposed as a witness during the inquiry. The opinion of Dr. K.K. Mishra is cryptic, based on conjectures for which there is no basis, and says nothing about the injuries being both ante-mortem and post-mortem. We have no hesitation in reaching this conclusion and preferring the testimony of the doctor who conducted the post-mortem.

9. We may also refer to the Report dated 19.12.1988 containing the finding in a joint inquiry conducted by the Executive Magistrate and the Circle Inspector of Police. This Report is stated to have been made under Section 176 Cr.P.C. and was strongly relied on by the learned Additional Solicitor General as a statutory report relating to the cause of death. In the first place, an inquiry under Section 176 Cr.P.C. is contemplated independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry. The joint finding recorded is that Suman Behera escaped from police custody at about 3 a.m. on 2.12.1987 and died in a train accident as a result of injuries sustained therein. There was hand-cuff on the hands of the deceased when his body was found on the railway track with rope around it. It is significant that the Report dated 11.3.1988 of the Regional Forensic Science Laboratory (Annexure 'R-8, at p.108 of the paperbook) mentions that the two cut ends of the two pieces of rope which were sent for examination do not match with each other in respect of physical appearance. This finding about the rope negatives the respondents' suggestion that Suman Behera managed to escape from police custody by chewing off the rope with which he was tied. It is not necessary for us to refer to the other evidence including the oral evidence adduced during the inquiry, from which the learned District Judge reached the conclusion that it is a case of custodial death and Suman Behera died as a result of the injuries inflicted to him voluntarily while he was in police custody at the Police Outpost Jeraikela. We have reached the same conclusion on a reappraisal of the evidence adduced at the inquiry taking into account the circumstances, which also support that conclusion. This was done in view of the vehemence with which the learned Additional Solicitor General urged that it is not a case of custodial death but of death of Suman Behera caused by injuries sustained by him in train accident, after he had managed to escape from police custody by chewing off the rope with which he had been tied for being detained at the Police Outpost. On this conclusion, the question now is of the liability of the respondents for compensation to Suman Behera's mother, the petitioner, for Suman Behera's custodial death.

10. In view of the decisions of this Court in *Rudual Sah v. State of Bihar and Another,* (1983) 3 S.C.R. 508, *Sebastian M. Hongray, v. Union of India and Others,* (1984) 1 S.C.R. 904 and (1984) 3 S.C.R. 544, *Bhim Singh v. State of J & K,* (1984) (Supp) S.C.C. 504 and (1985) 4 S.C.C. 677, *Saheli, A Women's Resources Centre and Others v. Commissioner of Police, Delhi Police Headquarters and Others,* (1990) 1 S.C.C. 422 and *State of Maharashtra and Others v*

Ravikant S. Patil, (1991) 2 S.C.C. 373, the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straight away that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on struk liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.

11. In *Rudul Sah (supra)*, it was held that in a petition under Article 32 of the Constitution, this Court can grant compensation for deprivation of a fundamental right. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution. Chandarachud, C.J., dealing with this aspect, stated as under:-

> "*It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal.* A money claim has therefore to be agitated in and adjudicated upon in suit instituted in a court of lowest grade competent to try it. *But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right.* The instant case is illustrative of such cases. .....
>
> .... *The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial,* in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. *The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for-*

> *their protection the powers of the State as a shield. If civilisation is not to perish in this country* as it has perished in some others too well-known to suffer mention, *it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."*
>
> (pp. 513-14)
>
> (emphasis supplied)

12. It does appear from the above extract that even though it was held that compensation could be awarded under Article 32 for contravention of a fundamental right, yet it was also stated that 'the petitioner could have been relegated to the ordinary remedy of a suit of his claim to compensation was factually controversial' and 'Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes'. This observation may tend to raise a doubt that the remedy under Article 32 could be denied 'if the claim to compensation was factually controversial' and, therefore, optional, not being a distinct remedy available to the petitioner in addition to the ordinary processes. The later decision of this Court proceed on the assumption that monetary compensation can be awarded for violation of constitutional rights under Article 32 or Article 226 of the Constitution, but this aspect has not been adverted to. It is, therefore, necessary to clear this doubt and to indicate the precise nature of the remedy which is distinct and in addition to the available ordinary processes, in case of violation of the fundamental rights.

13. Reference may also be made to the other decisions of this Court after *Rudul Sah*. In Sebastian M. Hongray v. Union of India and Others (I), (1984) 1 S.C.R. 90, it was indicated that in a petition for writ of *habeas corpus*, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control, and command of the detaining authority. In *Sebastian M. Hongray v. Union of India & Ors. (II)*, (1984) 3 S.C.R. 544, in such a writ petition, exemplary costs were awarded on failure of the detaining authority to produce the missing persons, on the conclusion that they were not alive and had met an unnatural death. The award was made in *Sebastian M. Hongray-II* apparently following *Rudul Sah*, but without indicating anything more. In *Bhim Singh v. State of J & K and Others* (1985) 4 S.C.C. 677, illegal detention in police custody of the petitioner Bhim Singh was held to constitute violation of his rights under Article 21 and 22(2) and this Court exercising its power to award compensation under Article 32 directed the State to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs or otherwise, taking this power to be settled by the decisions in *Rudul Sah and Sebastian M. Hongray. In Saheli*, (1990) 1 S.C.C. 422, the State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees. In *State of Maharashtra and Others v. Ravikant S. Patil*, (1991) 2 S.C.C. 373, the award of compensation by the High Court for violation of fundamental right under Article 21 of an undertrial prisoner, who was handcuffed and taken through the streets in the procession by the police during investigation, was upheld. However, in none of these cases, except *Rudul Sah*, anything more was said. In *Saheli*, reference was made to the State's liability for tortious acts of its servants without any reference being made to the decision of this Court in *Kasturilal Ralia Ram Jain v. The State of Uttar Pradesh,* (1965) 1 S.C.R. 375, wherein sovereign immunity was upheld in the case of vicarious liability of the State for the tort of its employees. The decision in Saheli, is, therefore, more in accord with the principle indicated in *Rudul Sah.*

14. In this context, it is sufficient to say that the decision of this Court in *Kasturilal* upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in *Rudul Sah* and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, *Kasturilal* related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. *Kasturilal* is, therefore, in-applicable in this context and distinguishable.

15. The decision of Privy Council in *Maharaj v. Attorney-General of Trinidad and Tobago* (No.2), (1978) 3 All ER 670, is useful in this context. That case related to Section 6 of the Constitution of Trinidad and Tobago 1962, in the chapter pertaining to human rights and fundamental freedoms, wherein Section 6 provided for an application to the High Court for redress. The question was, whether the provision permitted an order for monetary compensation. The contention of the Attorney-General therein, that an order for payment of compensation did not amount to the enforcement of the rights that had been contravened, was expressly rejected. It was held, that an order for payment of compensation, when a right protected had been contravened, is clearly a form of 'redress' which a person is entitled to claim under Section 6 and may well be the 'only practicable form of redress'. Lord Diplock who delivered the majority opinion, at page 679, stated :-

> "It was argued on behalf of the Attorney-General that s 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in *Jaundoo v. Attorney General of Guyana* [1971] SC 972. Reliance was placed on the reference in the sub-section to `enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that has been contravened. In their Lordships' view an order for payment of compensation when a right protected under s 1 `has been' contravened is clearly a form of `redress' which a person is entitled to claim under s6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of s6(2), viz jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section'. The very wide powers to

> Lord Diplock further stated at page 680, as under:-
>
> "Finally, their Lordships would say something about the measure of monetary compensation recoverable under s 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. *The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone*......."
>
> (emphasis supplied)

16. Lord Hailsham while dissenting from the majority regarding the liability for compensation in that case, concurred with the majority opinion on this principle and stated at page 687, thus:-

> " ..... I am simply saying that, on the view I take, the expression `redress' in sub-s (1) s 6 and the expression enforcement in sub-s (2), although capable of embracing damages where damages are available as part of the legal consequences of contravention, do not confer and are not in the context capable of being construed so as to confer a right of damages where they have not hitherto been available, in this case against the state for the judicial errors of a judge....."

Thus, on this principle, the view was unanimous, that enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

17. It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct' from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

19. This view finds support from the decisions of this Court in the Bhagalpur blinding cases: *Khatri and Others (II) v. State of Bihar and Others,* (1981) 1 S.C.C. 627 and *Khatri and Others (IV) v. State of Bihar and Others,* (1981) 2 S.C.C. 493, wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in *Union Carbide Corporation and Others v. Union of India and Others,* (1991) 4 S.C.C. 584, Misra, C.J. stated that 'we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future ...., there is no reason why we should hesitate to evolve such principal of liability....To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case, with regard to the court's power to grant relief.

20. We respectfully concur with the view that the court is not helpless and the wide powers given to this court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the havenots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

21. We may also refer to Article 9(5) of the International Covenant on Civil and Political rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:-

> "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah* and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in *Rudul Sah* and others in that line have to be understood and *Kasturilal distinguished* therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

23. The question now, is of the quantum of compensation. The deceased Suman Behera was aged about 22 years and had a monthly income between Rs. 1200/- to Rs. 1500/-. This is the finding based on evidence recorded by the District Judge, and there is no reason to doubt its correctness. In our opinion, a total amount of Rs. 1,50,000/- would be appropriate as compensation, to be awarded to the petitioner in the present case. We may, however, observe that the award of compensation in this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in Section 357(5) Cr.P.C. and Section 141(3) of the Motor Vehicles Act, 1988.

24. Accordingly, we direct the respondent-State of Orissa to pay the sum of Rs. 1,50,000/- to the petitioner and a further sum of Rs. 10,000/- as costs to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs. 1,50,000/- to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner's name for a period of three years, during which she would receive only the interest payable thereon, the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps in this behalf, and report copliance to the Registrar (Judicial) of this Court within three months.

25. We clarify that the award of this compensation, apart from the direction for adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the custodial death of petitioner's son Suman Behera. We also expect that the State of Orissa would take the necessary further action in this behalf, to ascertain and fix the responsibility of the individuals responsible for the custodial death of Suman Behera, and also take all available appropriate actions against each of them, including their prosecution for the offence committed thereby.

26. The writ petition is allowed in these terms.

Dr. Anand, J. (Concurring): — The lucid and elaborate judgment recorded by my learned Brother Verma J. obviates the necessity of noticing facts on reviewing the case law referred to by him. I would, however, like to record a few observations of my own while concurring with His Lordship's Judgment.

28. This Court was bestirred by the unfortunate mother of deceased Suman Behera through a letter dated 14.9.1988, bringing to the notice of the Court the death of her son while in police custody. The letter was treated as a Writ-Petition under Article 32 of the Constitution. As noticed by Brother Verma, J., an inquiry was got conducted by this Court through the District Judge Sundergarh who, after recording the evidence, submitted his inquiry report containing the finding that the deceased Suman Behera had died on account of multiple injuries infleited on him while in police custody. Considering, that it was alleged to be a case of custodial death, at the hands of those who are supposed to protect the life and liberty of the citizen, and which if established was enough to lower the flag of civilization of fly half-mast, the report of the District Judge was scrutinized and analysed by us with the assistance of Mr. M.S. Ganesh, appearing *amicus curiae* for the Supreme Court Legal Aid Committee and Mr. Altaf Ahmad, the learned Additional Solicitor General carefully.

29. Verma, J. while dealing with the first question i.e. whether it was a case of custodial death, has referred to the evidence and the circumstances of the case as also the stand taken by the State about the manner in which injuries where caused and has come to the conclusion that the case put up by the police of the alleged escape of Suman Behera from police custody and his sustaining the injuries in a train accident was not acceptable. I respectfully agree. A strenuous effort was made by the learned Additional Solicitor General by reference to the injuries on the head and the face of the deceased to urge that those injuries could not be possible by the alleged police torture and the finding recorded by the District Judge in his report to the contrary was erroneous. It was urged on behalf of the State that the medical evidence did establish that the injuries had been caused to the deceased by lathi blows but it was asserted that the nature of injuries on the face and left temporal region could not have been caused by the lathi and, therefore, the death had occurred in the manner suggested by the police in a train accident and that it was not caused by the police while the deceased was in their custody. In this connection, it would suffice to notice that the Doctor, who conducted the post-mortem examination, excluded the possibility of the injuries to Suman Behera being caused in a train accident. The injuries on the face and the left temporal region were found to be *post-mortem injuries* while the rest were ante-mortem: This aspect of the medical evidence would go to show that after inflicting other injuries, which resulted in the death of Suman Behera, the police with a view to cover up their crime threw the body on the rail-track and the injuries on the face and left temporal region were received by the deceased *after* he had died. This aspect further exposed not only the barbaric attitude of the police but also its crude attempt to fabricate false clues and create false evidence with a view to screen its offence. The falsity of the claim of escape stands also exposed by the report from the Regional Forensic Science Laboratory dated 11.3.1988 (Annexure R-8) which mentions that the two pieces of rope sent for examination to it, did not tally in respect of physical appearance, thereby belying the police case that the deceased escaped from the police custody by chewing the rope. The terory of escape has, thus, been rightly disbelieved and I agree with the view of Brother Verma, J. that the death of Suman Behera was caused while he was in custody of the police by police torture. A custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. It is not our concern at this stage, however, to determine as to which police officer or officers were responsible for the torture and ultimately the death of Suman Behera. That is a matter which shall have to be decided by the competent court. I respectfully agree with the directions given to the State by Brother Verma, J. in this behalf.

30. On basis of the above conclusion, we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which may be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress - by awarding monetary damages for the infraction of the right to life.

31. It is exiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restriction, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of that State, to ensure that there is no infringement of the indefeasable rights of citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoe is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either.

32. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed in available to the aggrieved party. The citizen complaining of the infringement of the indefeasable right under Article 21 of the Constitution cannot be told that for the established violations of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

> "No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought to to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence... This is not the task for Parliament... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare State; but abused they lead to a totalitarian State. None such must ever be allowed in this country."

33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasable rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

34. The public law proceeding serve a different purpose than the private law proceedings. The relief of monetary compensation, as `exemplary damages', in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasable right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasable rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making `monetary amends' under the public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of `exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decision of this Court in the line of cases starting with *Rudul Sah v. State of Bihar and Anr.* (1983 (3) SCR 508) granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly, particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self restraint lest proceedings under Articles 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the case referred to by Brother Verma, J.

36. In the facts of the present case on the findings already recorded, the mode of redress which commends appropriate is to make an order of monetary amend in favour of the petitioner for the eustodial death of her son by ordering payment of compensation by way of exemplary damages. For the reasons recorded by Brother Verma, J. I agree that the State of Orissa should pay a sum of Rs. 1,50,000/- to the petitioner and a sum of Rs. 10,000/- by way of costs to the Supreme Court Legal Aid Committee. I concur with the view expressed by Brother Verma, J. and the directions given by him in the judgment in all respects.

SCALE (PIL) 1981-97 1550

AKHIL BHARAT GOSEVA SANGH *Appellant*

VS

STATE OF A.P. & ORS. *Respondents*

CORAM: S.C. SEN, AND K. VENKATASWAMI, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — ANDHRA PRADESH PROHIBITION OF COW SLAUGHTER AND ANIMAL PRESERVATION ACT, 1977 — Update of order reported in 1997 (2) SCALE 649.

1. The Central Government has given a report pursuant to the last interim order passed on 12th March, 1997. Pursuant to that interim order the factory of Al Kabeer was being run at half strength. We are of the view that as further interim measure the factory will be permitted to run at full strength till 31st July, 1998. We are informed-that the Government of India is now in the process of conducting a census of the cattle population of India. We direct the Government to complete the census of the cattle population of Andhra Pradesh expeditiously and given this Court a report by 15th of April, 1998.

2. After receipt of the report the parties will be at liberty to mention the matter for early hearing. The previous direction of monitoring of the factory by various State agencies will continue. The State Government will also file an affidavit stating that the monitoring has been conducted and the finding of the monitoring. IAs. are disposed of.

Order dated November 20, 1997 in I.A. Nos. 7, 8 & 9 in C.A. Nos. 3968/94 & C.A.Nos 3964-67/94 [1997(7) SCALE 307]

SCALE (PIL) 1981-97 1551

UNION CARBIDE CORPN. LTD. *Appellants*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: G.T. NANAVATI AND G.B. PATTANAIK, JJ.

PUBLIC INTEREST LITIGATION — BHOPAL GAS TRAGEDY — Rendering of accounts by the Sole Trustee — Court directs him to do so giving further details.

I.A. Nos. 28-29

1. These applications are ordered to be listed along with Writ Petition (C) No. 66/96.

I.A. Nos. 30-31

2. Learned counsel Mr. Dushyant Dave appearing in these applications for the applicants states that in view of the earlier orders passed by this Court these applications have become infructuous and they are not pressed. Learned counsel for the other side has no objection. These applications are dismissed as infructuous.

I.A. Nos. 32-35

3. It appears these IAs do not now survive. Learned counsel appearing for the applicant in these IAs is directed to verify and let the Court know whether they have become infructuous or not. List these applications for further orders on 16.12.1997.

I.A. No. 36-37

4. The learned Additional Solicitor General submits that the Union of India is not in a position to give its response to the affidavit filed by the Sole Trustee with respect to expenditure made by him, for administrative purposes, for the years ending 31st December, 1995 & 31st December, 1996. Mr. Dushyant Dave, learned counsel for the Sole Trustee states that the necessary details will be filed before this Court, if the learned Additional Solicitor General indicates in respect of which items he wants further details. The Sole Trustee is also directed to broadly state how much amount was spent under which particular head. The Sole Trustee is granted four weeks time to submit the details after receiving the demand in that behalf from the Union of India. The question whether the Sole Trustee was entitled to incur such expenditure or not and all other contentions will be decided hereafter.

5. Adjourned to 16.12.1997.

I.A. No. 38-39

6. These applications are allowed and disposed of accordingly.

Order dated November 11, 1997 in I.A. No. 28-31 & 36-39 in C.A. No. 3187-88/88 [1998(1) SCALE 32]

SCALE (PIL) 1981-97 1551

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI. AND D.P. MADON, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COMPENSATION — SHRIRAM FOODS & FERTILIZER INDUSTRIES — GAS LEAKAGE — Manufacture of hazardous and lethal chemicals and gases — Pending the disposal of the petition, Held, Court orders that immediate medical care and attention be provided and appoints the Chief

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Order dated December 7, 1985 in W.P. (C) No. 12739 of 1985 [1985(2) SCALE 1280]

Metropolitan Magistrate, Delhi as the officer before whom claims for compensation may be filed by those who are affected by leakage of gas in the course of various incidents.

1. We are glad to note that the three learned Experts appointed by us have been good enough to visit the chlorine plant and to examine the situation with a view to ascertaining whether the recommendations made in the Report of the Expert Committee have been carried out. We are indeed grateful to them for sparing their valuable time and responding to the request of the Court. Of course the time at their disposal has been very short and they have not been able to make a close and detailed examination but they have given their *prima facie* opinion in regard to the implementation of the various recommendations contained in the Report of the Expert Committee. While making this order we bear in mind the oral report made by them.

2. When the writ petition was taken up for hearing by us the learned Additional Solicitor General stated that the District Magistrate, Delhi has made an order today under sub-section (1) of Section 133 of the Code of Criminal Procedure, 1973 directing and requiring Shriram Foods & Fertilizers Industries within two days from the date of issue of the order to cease carrying on the occupation of manufacturing and processing hazardous and lethal chemicals and gases including chlorine, oleus, super chlorine, phosphate etc. at their establishment in Delhi and within seven days to remove such chemicals and gases from the said place and not again to keep or store them at the said place or to appear on 17th December, 1985 at 11 a.m. in the court of the District Magistrate, Delhi to show cause why this order should not be enforced. We may make it clear that the interim order which is being made by us will not stand in the way of confirmation or enforcement of the order made by the District Magistrate, Delhi. We are a little surprised that the District Magistrate, Delhi who apparently thought that the chlorine plant should be closed down within two days and chemicals and gases should be removed within seven days should have given time to Shriram Foods and Fertilizers Industries to show cause against the enforcement of the order until 17th December, 1985, thereby virtually defeating the urgency of the action to be taken. But we are not sitting in judgment over this order of the District Magistrate, Delhi and we do not, therefore, propose to say anything more about it at the present moment beyond expressing our surprise that though the order seems to have been made by way of taking urgent action, its enforcement should have been postponed upto 17th December, 1985.

3. We may make it clear that this order made by us shall not be construed as in any manner precluding the Delhi Administration or the District Magistrate from making any order for immediate closure of the Chlorine Plant of Shriram Foods & Fertilizers Industries, if they so think fit.

4. The question which arises for consideration on this application for interim relief is whether until the hearing of the writ petition which we propose to fix at 10.30 a.m. on 13.12.1985, the chlorine plant of M/s Shriram Foods & Fertilisers Industries should be directed to be closed down. We would have been inclined to direct immediate closure of the chlorine plant but the three learned experts appointed by us have pointed out that the major element of hazard or risk lies in the use of two one-hundred metric ton tanks for storage of chlorine and when they inspected the chlorine plant, they found that these two one-hundred metric ton tanks were empty. Mr. Mehta who is the petitioner has stated before us that these two one-hundred metric ton tanks were emptied last night and chlorine which was stored in these two one hundred metric ton tanks was removed post haste in order to show to the three experts who were going to visit the chlorine plant pursuant to the order of this Court that there was no element of hazard or risk arising on account of use of these two one-hundred metric ton tanks. We do not propose to go into this controversy at the present moment but we would direct that until the final disposal of the writ petition, neither of these two one-hundred metric ton tanks shall be used for the purpose of storage of chlorine save and except as a dump or surge tank. The petitioner will be entitled to appoint three experts or representatives and any one or more of them will be given full access to the chlorine plant at any time of the day for the purpose of ensuring that the use of these two one-hundred metric ton tanks for storage of chlorine has been discontinued in obedience to this order of the Court. The petitioner along with his experts or representatives will also be entitled to visit the chlorine plant for the purpose of ascertaining whether the various recommendations of the Expert Committee have been carried out or not and whether there are any other draw-backs or deficiencies likely to endanger the lives of workmen and the public for this is a question which we have still to determine, for the purpose of deciding whether the chlorine plant should be closed down or not. The petitioner will submit the report of his experts or representatives by 10 a.m. on 11th December, 1985. Shri Hardev Singh, learned Advocate for the Delhi Bar Association, assures us that all possible assistance and stenographic facilities will be provided to the petitioner for this purpose. Copies of the report submitted by experts and representatives of the petitioner will be made available to the advocates appearing on behalf of the parties immediately after the same is filed. M/s Shriram Foods & Fertilizers Industries will file their reply, if any, to the Report of the experts or representatives of the petitioner by 5 p.m. on 12.12.1985. Mrs. Kumaramangalam appearing on behalf of the DCM Chemicals Employees Lok Hit (Cong.) Union will also file an affidavit setting out the various incidents of leakage of Oleum or Chlorine gas which, according to her, have occurred in the past prior to the leakage of Oleum gas on 4.12.1985. M/s Shriram Foods & Fertilizers Industries will be at liberty to file their reply to this affidavit by 5 p.m. on 11.12.1985.

5. We are informed by Mr. Hardev Singh that there are a large number of people who have suffered on account of leakage of gas from certain cylinders which were being transported and from which leakage of gas took place on 21.11.1985. Some of those persons have been badly affected and are in need of immediate medical attention and treatment. We would direct the Delhi Administration to take steps to see that immediate medical care and attention is provided to these persons whose particulars will be supplied by Mr. Hardev Singh to the Superintendent, Bara Hindu Rao Hospital.

6. The question remains as to what compensation is payable to the persons who are affected by the leakage of gas in the course of the various incidents and by whom. We propose to appoint the Chief Metropolitan Magistrate, Delhi as the officer before whom claims for compensation may be filed by those who are affected by leakage of gas in the course of various incidents. We would fix the time of four weeks from today within which such claims for compensation may be filed before the Chief Metropolitan Magistrate, Delhi. The Court will then consider what should be the principles on which compensation should be payable to the affected persons and who should be liable to pay the same and what should be the machinery through which claims for compensation should be decided on the basis of the principles and norms laid down by the Court. This direction is being given by us with a view to expediting adjudication of claims for compensation on behalf of persons affected by leakage of gas. We would like to dispel an impression in the public mind that claims for compensation cannot be speedily adjudicated upon in the Indian Courts.

7. We shall take up the hearing of the writ petition at 10.30 A.M. on 13th December, 1985. Notice of the writ petition shall be given immediately to Delhi Water Supply & Sewage Disposal Undertaking, Link House, Bahadur Shah Zafar Marg, New Delhi and the Delhi Municipal Corporation who will file an affidavit by 4 p.m. on 10.12.1985 stating as to how much quantity of chlorine consumed by them every day, what are the sources from which they are drawing on or can draw their supply of chlorine. Notice may also additionally be served on the Municipal Commissioner, Delhi.

SCALE (PIL) 1981-97 1554

M.C. MEHTA ETC. ETC. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI., D.P. MADON AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COMPENSATION — SHRIRAM FOODS & FERTILIZERS INDUSTRIES — Committee appointed to report whether the recommendations contained in the Manmohan Singh Committee Report and Dr. Nilay Chaudhuri Committee Report have been complied with by the Management of Shriram and even if there is no strict compliance of any of these recommendations whether the measures adopted by the Management of Shriram are sufficient to meet the requirements set out in the reports of Manmohan Singh Committee and Dr. Nilay Chaudhuri Committee.

1. Since there is a dispute as to whether the recommendations made in the Manmohan Singh Committee Report and Dr. Nilay Chaudhuri Committee Report have been carried out or not and there is, in particular, a controversy in regard to compliance with the recommendations of the Manmohan Singh Committee Report set out in para 3 of the affidavit of Mrs. M. Bassi, Joint Labour Commissioner, Delhi Administration, dated 31.1.1986, we appoint a committee consisting of Shri Manmohan Singh of the Indian Petrochemical Corporation Limited, Baroda, Professor P. Khanna of the Indian Institute of Technology, Bombay, Dr. Sharma of the University Department of Chemical Technology, Bombay and Shri Gharekhan, Member Secretary, Central Board for Prevention and Control of Water Pollution, to visit the site of the caustic chlorine plant of Shriram Foods and Fertilisers Industries (hereinafter referred to as Shriram) and report to this Court whether the recommendations contained in the Manmohan Singh Committee Report and Dr. Nilay Chaudhuri Committee Report have been complied with

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Order dated January 31, 1986 in W.P. Nos. 12739 of 1985 & 26 of 1986. [1986(1) SCALE 153] recommendations whether the measures adopted by the Management of Shriram are sufficient to meet the requirements set out in the reports of Manmohan Singh Committee and Dr. Nilay Chaudhuri Committee. We would request Professor B. Nag, Director, Indian Institute of Technology, Bombay, to make available the services of Professor P. Khanna for this purpose. This Committee constituted by us is requested to immediately proceed to carry out this assignment and to submit a report to this Court by 4.00 P.M. on 4.2.1986. The costs, charges and expenses of this Committee shall be met out of a sum of Rupees fifteen thousand to be deposited by Shriram in this Court, which shall be done by 11.00 A.M. on February 1, 1986. Copies of this Order shall be forwarded immediately to Shri Manmohan Singh, Professor B. Nag, Dr. Sharma, Professor P. Khanna and Shri Gharekhan. The Registrar will also intimate the contents of the order to Shri Manmohan Singh, Professor B. Nag, Professor P. Khanna, Dr. Sharma and Shri Gharekhan on telephone. The Members of this Committee coming from outside Delhi shall be entitled to reimbursement of their air fares, actual lodging and boarding expenses and transport charges from out of the amount of Rupees fifteen thousand deposited by Shriram. This Committee is requested to proceed with the task assigned to it even if any of its members is unable to join it. We would also direct the expert of the Regional Test Centre, Okhla, to visit the site of the Caustic Chlorine Plant from day-to-day and to complete the hydraulic test and submit a report to this Court by 11.00 A.M. on February 5, 1986. We would also direct the Management of Shriram to make available the radiography report along with the basic material and data on which the radiography report is bassed, to this Committee appointed by us, in order to enable the Committee to satisfy itself whether the plant is in fit and safe condition. Zerox copies of the report submitted by this Committee shall be supplied immediately on the same day to the petitioner as also to the learned Advocates appearing on behalf of the parties.

2. In case any of the Doctors nominated by us is not in a position to examine the claimants for compensation for want of time or is out of Delhi, he is requested to depute a few other Doctors in the same speciality working in the same hospital for the purpose of examining the claimants for compensation. The time for filing compensation claims shall stand extended for one week from today.

3. Both the writ petitions are adjourned to 5.2.1986.

SCALE (PIL) 1981-97 1555
M.C. MEHTA & ANR. *Petitioners*
VS
UNION OF INDIA & ORS. *Respondents*
CORAM: P.N. BHAGWATI, CJI., D.P. MADON AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COMPENSATION — SHRIRAM FOODS & FERTILIZER INDUSTRIES — (Reported in 1986(1) SCALE 153) — Priciples and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products, the basis on which damages in case of such liability

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Judgment dated February 17, 1986 in W.P. (C) No. 12739 of 1985 and C.W.P. No. 26 of 1986 (Shriram Foods & Fertiliser Industries & Anr. v Union of India & Ors.). [1986(1) SCALE 199]

should be quantified and whether such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted so to function, what measures must be taken for the purpose or reducing to a minimum the hazard to the workmen and the community living in the neighbourhood — Partly disposing of the matter, Held, Permission to restart subject to certain conditions granted — Court suggests setting up Environment Courts on regional basis.

1. Writ Petition No. 12739 of 1985 which has been brought by way of public interest litigation raises some seminal questions concerning the true scope and ambit of Arts. 21 and 32 of the Constitution, the principles and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products, the basis on which damages in case of such liability should be quantified and whether such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted so to function, what measures must be taken for the purpose of reducing to a minimum the hazard to the workmen and the community living in the neighbourhood. The questions which have been raised by the petitioner are questions of the greatest importance particularly since, following upon the leakage of MIC gas from the Union Carbide Plant in Bhopal, lawyers, judges and jurists are considerably exercised as to what controls, whether by way of relocation or by way of installation of adequate safety devices, need to be imposed on Corporations employing hazardous technology and producing toxic or dangerous substances and if any liquid or gas escapes which is injurious to the workmen and the people living in the surrounding areas, on account of negligence or otherwise, what is the extent of liability of such Corporation and what remedies can be devised for enforcing such liability with a view to securing payment of damages to the persons affected by such leakage of liquid or gas. These questions arise in the present case since on 4th and 6th December, 1985, there was admittedly leakage of oleum gas from one of the units of Shriram Foods and Fertilizer Industries and as a result of such leakage, several persons were affected and according to the petitioner and the Delhi Bar Association, one Advocate practising in the Tis Hazari Courts died. We propose to hear detailed arguments on these questions at a later date. But one pressing issue which has to be decided by us immediately is whether we should allow the caustic chlorine plant of Shriram Foods and Fertilizer Industries to be restarted and that is the question which we are proceeding to decide in the judgment.

2. Delhi Cloth Mills Ltd. is a public limited company having its registered office in Delhi. It runs an enterprise called Shriram Foods and Fertiliser Industries and this enterprise has several units engaged in the manufacture of caustic soda, chlorine, hydrochloric acid, stable bleaching powder, superphosphate, vanaspati, soap, sulphuric acid, alum anhydrous sodium sulphate, high test hypochlorite and active earth. These various units are all set up in a single complex situated in approximately 76 acres and they are surrounded by thickly populated colonies such as Punjabi Bagh, West Patel Nagar, Karampura, Ashok Vihar, Tri Nagar and Shastri Nagar and within a radius of 3 kilometres from this complex there is population of approximately 2,00,000. We are concerned in this Order only with the caustic chlorine plant. This plant was commissioned in the year 1949 and it has a strength of about 263 employees including executives, supervisors, staff and workers. It appears that until the Bhopal tragedy, no one, neither the management of Shriram Foods and Fertiliser

Industries (hereinafter referred to as 'Shriram') nor the Government seemed to have bothered at all about the hazardous character of caustic chlorine plant of Shriram. But, it seems that the Bhopal disaster shook of the lethargy of everyone and triggered off a new wave of consciousness and every Government became alerted to the necessity of examining whether industries employing hazardous technology and producing dangerous committees were equipped with proper and adequate safety and pollution control devices and whether they posed any danger to the workmen and the community living around them. The Labour Ministry of the Government of India accordingly commissioned 'Technica', a firm of Consultants, Scientists and Engineers of United Kingdom, to visit the caustic chlorine plant of Shriram and make a report in regard to the areas of concern and potential problems relating to that plant. Dr. Slater visited the caustic chlorine plant on behalf of Technica sometime in June-July 1985 and submitted a report to the Government of India summarising the initial impressions formed during his visit and subsequent dialogue with the management and with one Mr. Harries. This report was admittedly not an indepth engineering study but it set out the preliminary conclusions of Dr. Slater in regard to the areas of concern and potential problems. We do not propose to rely very much on this report since it is a preliminary report.

3. It appears that a question was raised in Parliament sometime in March 1985 in regard to the possibility of major leakage of liquid chlorine from the caustic chlorine unit of Shriram and of danger to the lives of thousands of workers and others. The Minister of Chemicals and Fertilizers, in answer to this question, stated on the floor of the House that the Government of India was fully conscious of the problem of hazards from dangerous and toxic processes and assured the House that the necessary steps for securing observance of safety standards would be taken early in the interest of the workers and the general public. Pursuant to this assurance, the Delhi Administration constituted an Expert Committee consisting of Shri Manmohan Singh, Chief Manager, IPCL, BARODA, as Chairman and 3 other persons as Members to go into the existence of safety and pollution control measures, covering all aspects such as storage, manufacture and handling of chlorine in Shriram and to suggest measures necessary for strengthening safety and pollution control arrangements with a view to eliminating community risk. The Manmohan Singh Committee visited the caustic chlorine plant and inspected various operations including storage tanks, cylinders and tonners and obtained detailed information from the management and after a thorough and exhaustive inquiry, submitted its Report to the Government. This Report is a detailed Report dealing exclusively with the caustic chlorine plant and considerable reliance must, therefore, be placed upon it. The Manmohan Singh Committee made various recommendations in this Report in regard to safety and pollution control measures with a view to minimising hazard to the workmen and the public and obviously the caustic chlorine plant cannot be allowed to be restarted unless these recommendations are strictly complied with by the management of Shriram.

4. Now, on 4th December, 1985 a major leakage of oleum gas took place from one of the units of Shriram and this leakage affected a large number of persons, both amongst the workmen and the public, and, according to the petitioner, an Advocate practising in the Tiz Hazari Courts died on account of inhalation of oleum gas. This leakage resulted from the bursting of the tank containing oleum gas as a result of the collapse of the structure on which it was mounted and it created a scare amongst the people residing in that area. Hardly had the people got out of the shock of this disaster when within two days, another leakage, though this time a minor one, took place as a result of escape of oleum gas from the joints of a pipe. The immediate response of the Delhi Administration to these two leakages was the making of an Order dated 6th December 1985 by the District Magistrate, under sub-s. (1) of s. 133 of the Code of Criminal Procedure, directing and requiring Shriram within two days from the date of issue of the order to cease carrying on the occupation of manufacturing and processing hazardous and lethal chemicals and gases including chlorine, oleum, super-chlorine, phosphate, etc. at their establishment in Delhi and within 7 days to remove such chemicals and gases from the said place and not again to keep or store them at the same place or to appear on 17th December 1985 in the court of the District Magistrate, Delhi to show cause whey the order should not be enforced. When we took up the Writ petitions for hearing on 7th December 1985, our attention was drawn to this order made by the District Magistrate, Delhi on 6th December 1985 and on perusing the order we pointed out the inadequacies in it which had the effect of virtually defeating the urgency of the action to be taken. We had earlier appointed a team of Experts to visit the caustic chlorine plant of Shriram and to report whether the recommendations of the Manmohan Singh Committee had been carried out by the management and this team of Experts orally reported to us at the hearing on 7th December, 1985 that they had been able to inspect the plant for only a couple of hours and that cursory inspection showed that many of the recommendations of the Manmohan Singh Committee appeared to have been complied with and that too two one hundred MT tanks for storage of chlorine which constituted a major element of hazards or risk had been emptied. Since this inspection made by the team of Experts had necessarily to be very hurried and superficial on account of want of sufficient time, we adjourned the writ petition to 13th December, 1985 with a direction that the petitioner would be entitled to appoint his own team of Experts who would be allowed access to the caustic chlorine plant for the purpose of ascertaining whether the various recommendations of the Manmohan Singh Committee had been carried out or not and whether there were any other drawbacks or deficiencies likely to endanger the lives of workmen and the public. We also, with a view to expediting adjudication of claims for compensation on behalf of the victims of oleum gas leakage, appointed the Chief Metropolitan Magistrate as the Officer before whom claims for compensation may be filed by persons affected by leakage of oleum gas in the course of the two incidents referred to above and we fixed time of four weeks within which such claims of compensation may be filed before the Chief Metropolitan Magistrate, Delhi. We may point out that subsequently by an Order dated.... we extended the time for filing of compensation claims upto January 31, 1986. We also by our Orders dated.. and.. gave a further direction that those who files compensation claims before the Chief Metropolitan Magistrate, Delhi should be got examined by a team of Medical Experts and this task was entrusted to the Secretary of the Delhi State Legal Aid and Advice Board. This direction was given by us with a view to ensuring that contemporaneous medical evidence of the injuries suffered by the claimants and of the cause of such injury should be available in support of the claims for compensation lodged by the victims of oleum gas leakage.

5. Pursuant to the liberty given by us, the petitioner appointed an Expert Committee consisting of Dr. G.D. Agarwal, Professor T. Shivaji Rao and Shri Purkayastha. This

Committee, which we shall hereafter refer to as the 'Agarwal Committee', visited the caustic chlorine plant and submitted a Report to this Court in which it pointed out various inadequacies in the plant and expressed the opinion that it was not possible to eliminate hazard to the public so long as the plant remained at the present location.

6. Since there were conflicting opinions put forward before us in regard to the question whether the caustic chlorine plant should be allowed to be restarted without any real hazard or risk to the workmen and the public at large, we though it desirable to appoint an independent team of Experts to assist us in this task. We accordingly by an Order dated 18th December, 1985 constituted a Committee of Experts consisting of Dr. Nilay Choudhary as Chairman and Dr. Aghoramurty and Mr. R.K. Garg as members to inspect the caustic chlorine plant and submit a report to the Court on the following three points :

1. Whether the plant can be allowed to recommence the operations in its present state and conditions ?
2. If not, what are the measures required to be adopted against the hazard or possibility of leaks, explosion, pollution of air and water etc., for this purpose ?
3. How many of the safety devices against the above hazards and possibility exist in the plant at present and which of them, though necessary, are not installed in the plant.

This Committee of Experts to which we shall hereafter for the sake of convenience, refer to as 'Nilay Choudhary Committee', visited the caustic chlorine plant on December 28, 1985 and after considering the Reports of Dr. Slater, Manmohan Singh Committee and Agarwal Committee on hearing the parties made a report to the Court setting out 14 recommendations which in its opinion were required to be complied with by the management in order to minimise the hazards due to possible chlorine leakage. Nilay Choudhary Committee pointed out that it was in agreement with the recommendations made in the Report of the Manmohan Singh Committee which were exhaustive in nature and obviously the recommendations made by it in its Report were supplementary recommendations in addition to those contained in Manmohan Singh Committee's Report.

7. We have thus two major Reports, one of Manmohan Singh Committee and the other of Nilay Choudhary Committee, setting out the recommendations which must be complied with by the management of Shriram in order to minimise the hazard or risk which the caustic chlorine plant poses to the workmen and the public. The question is whether these recommendations have been complied with by the management of Shriram, for it is only if these recommendations have been carried out that we can possibly consider whether the caustic chlorine plant should be allowed to be restarted.

8. There is also one other report to which we must refer in this connection and that is the Report made by the Expert Committee appointed by the Lt. Governor of Delhi following upon the leakage of oleum gas on 4th December 1985. Since the leakage of oleum gas caused serious public concern, the Lt. Governor of Delhi constituted an Expert Committee consisting of Shri N.K. Seturaman as Chairman and four other experts as members to go into the causes of spillage of oleum and its after-effects, to examine if inspection and safety procedures prescribed under the existing laws and rules were followed by Shriram, to fix responsibility for the leakage of oleum gas, to review the emergency plans and measures for containment of risk in the event of occurrence of such situations and for elimination of pollution, to examine any other aspects that may have a bearing on safety pollution control and hazard to the public from the factory of Shriram, to make specific recommendations with a view to achieving effective pollution control and safety measures in the factory and to advise whether the factory should be shifted away from its present location in densely populated area. This Committee to which we shall hereafter refer to as the "Seturaman Committee" made and on the spot inspection of the site of the factory and after obtaining the required information about the plant submitted a Report on 3rd January 1986. This Report, it must be conceded, deals primarily with the safety procedures in the sulphuric acid plant from which there was oleum gas leakage and is not based on any indepth review and study of safety and pollution control measures in the caustic chlorine plant. But even so it does contain some observations which have relevance to the question whether the caustic chlorine plant poses any hazard to the community and what steps or measures are necessary to be taken to minimise the risk to the people living in the vicinity.

9. It is necessary at this stage to point out that whilst these proceedings were going on before the Court, an order dated 7th December 1985 was issued by the Inspector of Factories, Delhi in exercise of the power conferred under Section 40 sub-section (2) of the Factories Act, 1948. The order commenced with the following recital, viz.,

> "Whereas it has appeared to me that Caustic chlorine plant and sulphuric acid plants are running without adequate safety measures being adopted by your management, thereby endangering the human life and safety of the workers and the public at large. Earlier notices of the Labour Department asking your management to ensure proper safety measures has not been complied with fully; and
>
> Whereas inspite of your management's assurance vide letter dated 14.10.1985, on 4.12.85, no adoption of the adequate safety measures have resulted in collapse of the structure on which oleum tank was mounted resulting in the massive leakage of oleum causing fumes in the environment affecting the health and safety of a large number of residents of the Union Territory of Delhi; and
>
> Whereas the factory is not still having adequate safety measures required for such plants."

and prohibited Shriram from using the caustic chlorine and sulphuric acid plants till adequate safety measures are adopted and imminent danger to human life is eliminated. Soon thereafter, on December 13, 1985, a show-cause notice was issued by the Assistant Commissioner (Factories) of the Municipal Corporation of Delhi calling upon Shriram to show-cause as to why action or revocation of its licence should not be taken under Section 430 sub-section (3) of the Delhi Municipal Corporation Act, 1957 for violation of the terms and conditions of the licence. Shriram by its letter dated 23rd December, 1985 showed cause against the proposed cancellation of its licence but by an Order dated 24th December 1985, the Assistant Commissioner (Factories) directed Shriram to stop industrial use of the premises at which the chlorine caustic plant is located. The result is that unless these two orders-one dated 7th December 1985 and the other dated 24th December 1985-are vacated or suspended, Shriram cannot be allowed to restart the caustic chlorine plant.

10. We may first consider what has been said by the various Expert Committees in regard to the relocation of the caustic chlorine plant. All the Expert Committees are unanimous in their view that by adopting proper and adequate safety measures the element of risk to the workmen and the public can only be minimised but it cannot be totally eliminated. Dr. Slater has in the last part of his Report pointed out that inspection of the caustic chlorine plant revealed "a worrying state of affairs" and he was of the opinion that the plant was liable to be "classed as a major hazard facility by applying most of the currently accepted definitions" and it did not "measure up to the responsibilities incumbent upon operators of such plants to safeguard both public and employees so far as is reasonably practicable". He made various recommendations which in his opinion were required to be complied with by Shriram and he added that if a substantial improvement in safety was not possible or rapidly forthcoming along the lines of these recommendations "the authorities should consider constraining its activities to protect the public and employees." He concluded by observing that "relocation is the only practicable long term option which would guarantee the complete removal of the community risk". The Manmohan Singh Committee also observed towards the end of its Report that "total elimination of risk to the community i.e. human population from toxic plant/hazardous industry located in close proximity is improbable. However, the probability of risk can be immensely reduced if the plant is run with adequate precautions," and proceeded to make various recommendations for "strict and immediate compliance with an object to minimise risk to the workers and the population around." Seturaman's Committee also pointed out in paragraph 10.8.1. of its Report that Shriram factory "is certainly a perennial source of hazard to the community. These hazards cannot be completely eliminated but could be minimised by strict compliance of safety regulations. Giving due weight to the hazard aspects as mentioned above and taking into account the safety of the community as a whole," the Manmohan Singh Committee observed that functioning of the SFFI in the present location is not desirable. So also Aggarwal Committee opined that "under so many uncertain factors a chlorine manufacturing unit cannot be even reasonably safe when located in proximity to a densely populated area. In the circumstances, the only practical solution is to relocate the chlorine plant at least 10 k.ms. away from the urban limits of densely populated areas with adequate safety measures. "Finally Nilay Choudhary Committee also stated that even if all the recommendations made in its Report as also in the Report of Manmohan Singh Committee were carried out, "the risk due to major release of chlorine could only be reduced but not completely eliminated, complete elimination of the risk to the population at large obviously lies in relocation of the plant in an area without human habitation." It will thus be seen that the general consensus of opinion of all the Expert Committees is that relocation of the caustic chlorine plant is the only long term solution if hazard to the community is to be completely eliminated. We have therefore decided to hear arguments on the question as to whether the caustic chlorine plant should be directed to be shifted and relocate at a place where there will be no hazard to the community and if so, within what time frame. This is a question which will require serious consideration and a National Policy will have to be evolved by the Government for location of toxic or hazardous industries and a decision will have to be taken in regard to relocation of such industries with a view to eliminating risk to the community likely to arise from the operation of such industries. But the immediate question which we have to consider is whether the caustic chlorine plant of Shriram should be allowed to be reopened and if so, subject to what conditions, keeping in mind constantly that the operation of the caustic chlorine plant does involve a certain amount of hazard or risk to the community.

11. Now it is an admitted fact that the caustic chlorine plant was set up by Shriram more than 35 years ago and whatever might have been the situation at the time when the plant was installed, it cannot be disputed that, at present, largely owing to the growth and development of the city, there is sizable population living in the vicinity of the plant and there is therefore hazard or risk to large numbers of people, if on account of any accident, whether occasioned by negligence or not, chlorine gas escapes. The various Expert Committees appointed by the Government as well as by the Court clearly emphasise the danger to the community living in the vicinity of the caustic chlorine plant if there is exposure to chlorine gas through an accidental release which may take place on account of negligence or other unforeseen events. Now it is evident from the reports of the Expert Committees - and on this aspect of the matter they are all unanimous-that there was considerable negligence on the part of the management of Shriram in the maintenance and operation of the caustic chlorine plant and there were also defects and drawbacks in its structure and design. The report of Dr. Slater which is the first report in the series clearly pointed out that the safety policies, practices and awareness on the part of the management needed to be addressed urgently and added *inter alia* that the effectiveness and availability of the design and emergency arrangements was, to say the least, questionable and in the real emergency involving a major spill, the measures would probably prove ineffective in limiting serious consequences inside and outside the plant. He also added that the standard of house-keeping and training among the operational staff was not good and it was symptomatic of inadequate awareness of the importance of safety devices and the scale of potential consequences following "loss of containment". He also reiterated that the manner in which the caustic chlorine plant was being maintained and operated did not "measure up to the responsibilities incumbent upon operators of such plants". So also the report of Manmohan Singh Committee pointed out various drawbacks and deficiencies in the structure and design of the caustic chlorine plant as also in its maintenance and operation and made various detailed recommendations which in the opinion of the Manmohan Singh Committee needed to be strictly and scrupulously carried out, if the risk to the workers and the population in the vicinity was to be minimised. The Nilay Choudhary Committee also made several recommendations in order to minimise the hazard due to a possible leakage of chlorine gas. The management of Shriram claimed that all these recommendations made in the reports of Manmohan Singh Committee and Nilay Choudhary Committee had been carried out by Shriram and the possible hazard to the workers and the community living in the vicinity was almost reduced to nil and that Shriram should therefore be allowed to reopen the caustic chlorine plant. The management of Shriram made it clear that they did not intend to restart immediately their plants manufacturing Sulphuric Acid, Oleum, Chlorosulphonic Acid, Super Phosphate and Granulated Fertiliser Ferric Alum and Active Earth. Since these plants were under detailed engineering audit and that out of these plants Double Conversion Double Absorption Sulphuric Acid plant and Ferric Alum and Active Earth plants would be started in the second phase "after attending to immediate maintenance needs" and that so far as the other plants were concerned the schedule for restarting would be communicated latter. The only plants in respect of which Shriram sought the permission of the Court to restart were the power plant and the plants manufacturing vanaspati and refined oil including its by products and recover plants like, soap, glycerine and technical hard oil and the caustic plant chlorine plant including plants manufacturing by-product such as sodium sulphate, hydrochloricacid, stable bleaching powder, superchlor, sodium hypochlorite and container works. Our directions in the present judgment must therefore necessarily be confined only to these plants which Shriram wants to restart immediately and we may make it clear that so for as other plants which Shriram does not propose to restart immediately are concerned, they shall not be restarted by Shriram without obtaining further directions from the Court, particularly since the machinery and equipment in some of these plants is as pointed out in the report of Seturaman Committee old and worn out and the safety instrument action is not adequate and the Court would therefore have to be satisfied that the machinery and equipment is properly renovated and its design and structure modernised with a view to ensuring maximum safety before the Court can permit these plants to be recommissioned. Now, of course, there could be no objection to the restarting of the vanaspati and refined oil plant and other recovery plants like soap, glycerine and technical hard oil, because they admittedly do not involve any risk or hazard to the community but these plants obviously cannot be restarted by the management of Shriram unless and until the caustic chlorine plant is also allowed to be reopened, because hydrogen is needed for the vanaspati and refined oil plant and hydrogen would not be available unless the caustic chlorine plant is put into operation. The question which therefore requires.....to be considered is whether all the recommendations made in the reports of Manmohan Singh Committee and Nilay Choudhary Committee in regard to the caustic chlorine plant have been carried out by the management of Shriram and if so, whether Shriram should be allowed to restart the caustic chlorine plant.

12. Since there was considerable controversy between the parties as to whether the recommendations made in the report of Manmohan Singh Committee and Nilay Choudhary Committee had been carried out by the management of Shriram and a notice dated 28th January, 1986 issued by the Inspector of Factories (Delhi) to the management of Shriram set out seven of these recommendations in respect of which the Inspector of Factories did not appear to be satisfied as to whether they had been complied with or not and a dispute was also specifically raised in the affidavit of Mrs. M. Bassi, Joint Labour Commissioner, Delhi Administration, dated 31st January, 1986 in regard to compliance with the recommendations of Manmohan Singh Committee set out in paragraph 3 and the recommendations of Nilay Choudhary Committee set out in paragraph 4 of the affidavit, the Court decided to appoint another Expert Committee for the purpose of ascertaining whether the various recommendations made in the reports of Manmohan Singh Committee and Nilay Choudhary Committee had been complied with by the management. The Court accordingly made a order on 31st January, 1986 appointing a Committee consisting of Shri Manmohan Singh, Professor P. Khanna, Dr. Sharma and Shri Gharekhan to visit the site of the caustic chlorine plant of Shriram and report to the Court whether the recommendations contained in the reports of Manmohan Singh Committee and Nilay Choudhary Committee had been complied with by the management of Shriram and even if there was no strict compliance with any of these recommendations, whether the measures adopted by the management of Shriram were sufficient to meet the requirements set out in the reports of

Manmohan Singh Committee and Nilay Choudhary Committee. It seems that Professor P. Khanna could not make his services available with the result that the assignment entrusted by us by our order dated 31st January, 1986 had to be carried out by a Committee consisting of only three persons, namely, Shri Manmohan Singh, Dr. Sharma and Shri Gharekhan. The Committee inspected the caustic chlorine plant of Shriram and submitted its report dt. 3rd February, 1986 showing the status of compliance of the recommendations made by the Manmohan Singh Committee and Nilay Choudhary Committee. The report showed that barring the construction of a shed on the space where filled cylinders are to be kept, which construction is expected to be complete by 15th March, 1986, all the recommendations made in the reports of Manmohan Singh Committee and Nilay Choudhary Committee have been complied with by the management of Shriram. The hydraulic test carried out by Messrs. Nike Associates, Bombay, a firm recognised by the Chief Inspector of Factories, Bombay, as 'competent person' to take up the responsibilities of testing, examining and issuing certificate in respect of pressure vessels also established that all the five tanks had an adequate capacity of withstanding pressure. Since however the authorities wanted a hydraulic test to be carried out once again by the Regional Testing Centre, Okhla, the management of Shriram got a fresh test carried out by the Regional Testing Centre and the certificate issued by the Regional Testing Center dated 4th February, 1986 showed that all the five tanks were found to be strong enough to withstand pressure of 375 dsig. for thirty minutes' duration. The Committee also insisted that not more than 140 filled chlorine cylinders should be stored and the report shows that this limitation has been accepted by the management of Shriram. The Committee also witnessed a mockdrill with a view to ensuring whether there was a specially trained group to handle any chlorine leakage emergency and the Committee stated in the report chlorine leakage emergency and the Committee stated in the report that the mock-drill was found to be satisfactory. There were also one or two other recommendations in respect of which the Committee observed that compliance with them could be tested only during the operation of the plant.

13. The question is whether in view of the fact that all the recommendations made in the Reports of Manmohan Singh Committee and Nilay Choudhary Committee have now been complied with by the management of Shriram, the caustic chlorine plant of Shriram should be allowed to be restarted. The petitioner who appeared in person submitted vehemently and passionately that the court should not permit the caustic chlorine plant to be restarted because there was always an element of hazard or risk to the community in its operation. He urged that chlorine is a dangerous gas and even if the utmost care is taken the possibility of its accidental leakage cannot be ruled out and it would therefore be imprudent to run the risk of allowing the caustic chlorine plant to be restarted. Mrs. Kumaramangalam, learned counsel appearing on behalf of Lokahit Congress Union as also the learned counsel appearing on behalf of Karamchari Ekta Union, however, expressed themselves emphatically against the permanent closure of the caustic chlorine plant and submitted that if the caustic chlorine plant was not allowed to be restarted, it would not be possible to operate the plants manufacturing the down stream products and the result would be that about 4,000 workmen would be thrown out of employment. Both the learned counsel submitted that since all the recommendations made in the reports of Manmohan Singh Committee and Nilay

Choudhary Committee had been complied with by the management of Shriram and the possibility of risk or hazard to the community had been considerably minimised and in their opinion reduced to almost nil, the caustic chlorine plant should be allowed to be reopened. The learned Addl. Solicitor General appearing on behalf of the Union of India and the Delhi Administration stated before us that his clients were not withdrawing their objection to the reopening of the caustic chlorine plant but if the court was satisfied that there was no real risk or hazard to the community by reasons of various recommendations of Manmohan Singh Committee and Nilay Choudhary Committee having been carried out by the management of Shriram, the court might make such order as it thinks fit, but in any event, strict conditions should be imposed with a view to ensuring the safety of the workmen and the people in the vicinity. The learned counsel for Shriram strongly pleaded that now all the recommendations made in the reports of Manmohan Singh Committee and Nilay Choudhary Committee had been complied with by the management and every possible step had been taken and measure adopted for the purpose of ensuring complete safety in the operation of the caustic chlorine plant, there was no real danger of escape of chlorine gas and even if there was same leakage it could be only of a small quantity and such leakage could easily be contained and there was therefore no reason for permanently closing down the caustic chlorine plant as it would result not only in loss to the company but also in unemployment of about 4,000 workmen and non-availability of chlorine to Delhi Water Supply Undertaking and short supply of down stream products. These rival contentions raise a very difficult and delicate question before the court as to what course of action to adopt.

14. It is undoubtedly true that chlorine gas is dangerous to the life and health of the community and if it escapes either from the storage tanks or from the filled cylinders or from any other point in the course of production, it is likely to affect the health and well-being of the workmen and the people living in the vicinity. There was some controversy before us as to what is the concentration of chlorine in the air which is dangerous to life and health. Aggarwal Committee in its report stated that concentration of chlorine in the air above 25 parts per million (PPM) is recognised by Occupational Safety and Health Act (USA) as immediately dangerous to life and health, but this was disputed on behalf of the management of Shriram relying on the report of Manmohan Singh Committee which opined that it is only where concentration of chlorine in the air is between 40 to 60 parts per million (PPM) that exposure for 30 minutes would be dangerous to life. It is not necessary for us to go into this controversy and decide as to which view is correct, whether the one expressed by Aggarwal Committee or the one expressed by Manmohan Singh Committee. Fortunately, both Committees are agreed that chlorine is a hazardous gas and though smaller concentrations of chlorine in the air may cause only irritation and coughing, larger concentrations, whether above 25 parts per million (PPM) or above 40 parts per million (PPM) are likely to cause serious danger to life. There can therefore be no doubt that there would be hazard to the life and health of the community, if there is escape of chlorine gas from the caustic chlorine plant, whether by reason of negligence of the management or due to accidental release. In fact the issue of the Journal "Scavengar" for January, 1985 enumerates some major accidents which have occurred in different parts of the world in the process industries and this enumeration shows that not less than 25 accidents have been caused by escape of chlorine gas in the last about 70 years and many of these accidents have resulted in death of quite a few persons. To take only a few examples, the escape of chlorine from storage tank in Wilsum Germany in 1952 resulted in death of seven persons and similarly release of chlorine gas in Banks-town, Australia in 1967 resulted in gassing of five persons and on account of escape of chlorine gas in Baton Rouge in 1976, about 10,000 persons had to be evacuated. It is true that quite a few of these accidents arose on account of escape of chlorine gas in course of transport by rail tank cars but some accidents did occur on account of escape of chlorine gas from storage tanks. We cannot therefore ignore the possible hazard to the health and well-being of the workmen and the people living in the vicinity on account of escape of chlorine gas. We also cannot overlook the old and worn out state of machinery and equipment, the negligence of the management in the maintenance and operation of the caustic chlorine plant and the indifference shown by the management in installing proper safety devices and safety instruments and taking proper and adequate measures for ensuring safety of the workmen and the people living in the vicinity. These are considerations which are very relevant in deciding whether the caustic chlorine plant should be allowed to be restarted. But as against these considerations, we must also take into account the proven fact that all the recommendations made in the Reports of Manmohan Singh Committee and Nilay Choudhary Committee have been carried out by the management of Shriram and it is the opinion of not only Manmohan Singh Committee and Nilay Choudhary Committee but also of the last Committee appointed by us on 31st January, 1986 that since all these recommendations have been complied with by the management in satisfactory manner, Shriram may be allowed to restart the caustic chlorine plant. There can be no doubt, particularly having regard to the opinion of Manmohan Singh Committee, Nilay Choudhary Committee and the last Committee appointed by us, that the possibility of hazard or risk to the community is considerably minimised and there is now no appreciable risk of danger to the community if the caustic chlorine plant is allowed to be restarted. We cannot also ignore the interests of the workmen while deciding this delicate and complex question. It could not be disputed either by the Government of India or by the Delhi Administration or even by the petitioner that the effect of permanently closing down the caustic chlorine plant would be to throw about 4,000 workmen out of employment and that such closure would lead to their utter impoverishment. The Delhi Water Supply Undertaking which gets its supply of chlorine from Shriram would also have to find alternative sources of supply and it was common ground between the parties that such sources may be quite distant from Delhi. The production of down stream products would also be seriously affected resulting to some extant in short supply of these products. These various considerations on both sides have to be weighed and balanced and a decision has to be made as to on which side the considerations preponderate and tilt the balance. It is none too easy task, for the decision either way may entail serious consequences. We have therefore reflected over the various aspects of this rather difficult and complex question with great anxiety and care and taking an overall view of the diverse considerations, we have, with considerable hesitation, bordering almost on trepidations reached the conclusion that, pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and relocated at some other place, the caustic chlorine plant should be allowed to be restarted by the management of Shriram, subject to certain stringent conditions which we propose to specify.

15. But before we proceed to set out the conditions which must strictly be observed by the management of Shriram while operating the caustic chlorine plant, we must deal with one other question which was raised before us on behalf of the Central Board of Preventions and Control of Water Pollution (hereinafter referred to as the Central Board). The Central Board is constituted under the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Water Act) and it is also required to perform the functions assigned under the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the Air Act). Since some of the plants of Shriram situate within the complex including the vanaspati plant were discharging effluent, Shriram was required to obtain consent for discharging effluent from the Central Board under Section 25 of the Water Act and Shriram accordingly made an application for this purpose in the prescribed form. The Central Board passed an Order on 19th April, 1979 granting consent to Shriram to discharge effluent from their factory in the sewer, subject to the terms and conditions set out in the consent order. The consent granted to Shriram was renewed from time to time and the last renewed Consent Order was dated 22nd July, 1985 and it was valid upto 31st December, 1985. Pursuant to the Consent Order Shriram installed effluent treatment plants in the vanaspati, stable bleaching powder, super phosphate and active earth units with a view to complying with the limiting standards stipulated by the Central Board in the Consent Order. The waste water in other units was either solar dried in lagnons or recycled in the different process houses and the major units emanating waste water were thus vanaspati, active earth, superphosphate and stable bleaching powder plants. The waste water effluent from these four plants used to be drained out through one common terminal outlet and the complaint of the Central Board was that this combined effluent at the terminal outlet never complied with the limiting standards prescribed by the Central Board. The results of analysis of the samples collected by the officers of the Central Board at the terminal outlet were annexed as Annexure I to the supplementary affidavit dated 19th December, 1985 filed by Shri P.R. Gharekhan on behalf of the Central Board. The Central Board also repeatedly complained that the effluent discharged from the vanaspati plant was not in accordance with the limiting standards prescribed in the Consent Order. Now, as pointed out by Surendra Kumar, Senior Environmental Engineer, the employ of Shriram, there are broadly two technologies available for effluent treatment in vanaspati industry. One is the technology of removing suspended solids by settling with the help of clariflocculation and the other is the technology of removing suspended solids, oils and grease and greasy solids by flotation and skimming. The affidavit of Surendra Kumar stated that the technology based on settling with the help of clariflocculation was recommended by the Central Board and Messrs Dorr Oliver were selected by Shriram in consultation with the Central Board for supply of an effluent treatment plant employing this technology. But, unfortunately, the plant of Messrs Door Oliver failed to give the guaranteed results presumably because this technology was not satisfactory. The Central Board in fact carried out a performance evaluation of this plant in December, 1983 and they came to the conclusion that this plant would require substantial changes to make it to achieve stipulated effluent standards. It was then realised that the technology of removal of impurities by flotation method is more appropriate for vanaspati plant effluent and

Shriram accordingly once again, as pointed out in the affidavit of Surendra Kumar, made a reference to the Central Board. On 17th January, 1985 the Central Board directed that Messrs Kroft Engineering Company should be asked to set up a pilot plant based on dissolved air flotation technology in the vanaspati plant for treatability study of the effluent. But despite the follow-up action taken by Shriram, the pilot plant was not set up by Messrs Kroft Engineering Company. Shriram thereupon, in its anxiety to comply with the limiting standards set by the Central Board in the Consent Order, placed an order with another reputed supplier namely, Messrs Patel Brothers of Bombay in June, 1985 for supply of a plant based on flotation technology. Messrs Patel Brothers guaranteed to install and commission the plant by 31st December, 1985 but the affidavits show that there has been some delay in the installation of this plant and its installation is now going to be completed by 28th February, 1986. Meanwhile, however, Shriram installed at the terminal outlet a plant based on dissolved air flotation technology of Messrs Krofta Engineering Company and the counter-affidavit of Shri P.R. Gharekhan dated 13th January, 1986 shows that the representatives of the Central Board have verified that this terminal treatment plant has been installed. However, the performance of this terminal treatment plant is yet to evaluated by the Central Board in order to assess compliance with the limiting standards stipulated in the Consent Order. The Central Board will therefore have to evaluate the performance of this terminal treatment plant after the caustic chlorine and other plants of Shriram commence production. So far as the effluent discharged by the active earth plant and stable bleaching plant is concerned, it complies with the limiting standards prescribed for it in the Consent Order but the effluent discharged by the vanaspati plant does not comply with the relevant limiting standards. Shriram has, however, stated that once the plant ordered from Messrs Patel Brothers, Bombay is installed, it will be possible to secure compliance with the requirement of the limiting standards. This of course will have to be assessed on the basis of performance evaluation of the plant of Messrs Patel Brothers when installed.

16. But there is one difficulty in the way of Shriram restarting its vanaspati plant. The last renewed Consent Order dated 2nd July, 1985 expired on 31st December, 1985 and obviously therefore Shriram cannot operate the vanaspati plant and discharge effluent unless and until the Consent Order is renewed, for the discharge of effluent without Consent Order would be contrary to the provisions of the Water Act. We, however, find that the Central Board has stated in the affidavit filed in this behalf by Shri D.C. Sharma, Assistant Environmental Engineer, that the Central Board has no objection to grant temporary consent pursuant to the provisions of the Water Act on condition that Shriram would comply with all the recommendations of various Committees appointed by this Court or otherwise and that such consent would be valid only for a period of one month from the date of issue of the Consent Order. Since we are permitting Shriram to reopen its caustic chlorine vanaspati and other plants above referred to, we would ask the Central Board to grant a temporary Consent Order to Shriram valid for a period of one month from the date of its issue and the Central Board will take samples from the effluent discharged from the vanaspati plant as also at the terminal outlet and ascertain whether the samples comply with the limiting standards set out in the Consent Order. If the samples do not comply with the relevant standards, the Central Board will immediately bring such fact to the notice of this Court and it will be open to the Central Board to take such action as it thinks fit including non-renewal of the Consent Order.

17. So far as compliance with the provisions of the Air Act is concerned, the Central Government in consultation with the Central Board issued a notification under Section 19(1) of the Air Act notifying certain areas in the Union Territory of Delhi as air pollution control area. The plants of Shriram are admittedly situated in the air pollution control area and the industries carried on by Shriram also fall within the schedule of industries specified in the Air Act. Shriram was therefore required to apply for a Consent Order from the Central Board under Section 21 of the Air Act and an application was accordingly made by Shriram on the basis of which a Consent Order was issued by the Central Board on 13th June, 1985 authorising Shriram to operate their plants in the air pollution control area, subject to the conditions set out in the Consent Order. The Consent Order relates to three plants of Shriram, namely, sulphuric acid plant, super phosphate plant and power plant. We are not concerned at the present stage with the sulphuric acid and super phosphate plants since permission to restart them is not presently sought by Shriram and we need not therefore pause to consider whether the conditions laid down in the Consent Order in respect of these two plants have been complied with or not. So far as the power plant of Shriram is concerned, it is not the case of the Central Board that the conditions in the Consent Order in regard to the operation of the power plant are not being complied with by the management, though there is a specific complaint made in the affidavit filed on behalf of the Central Board that the conditions in the Consent Order related to sulphuric acid and super phosphate plants are not being observed. We may however point out that if the Central Board finds at any time that the conditions in the Consent Order relating to the power plant are not being complied with and the particulate matter emitted by the stacks of the boiler is more than 150 mg/Nm^3, it will be open to the Central Board to take whatever action is appropriate under the law.

18. Before we part with this topic of water and air pollution by the plants operated by Shriram, we may point out a most unsatisfactory state of affairs which seems to prevail in the Delhi Municipal Corporation. The Municipal Corporation sewer in the Najafgarh area has admittedly been lying chocked since 1980 with the result that Shriram has since then not been able to discharge its domestic effluent in the municipal sewer and the domestic effluent has to be discharged in the Nazafgarh drain thereby adversely affecting the standards prescribed by the Central Board. It is difficult to understand as to why the Delhi Municipal Corporation has not taken any steps for the last five years to clean up the sewer so that it can be used for carrying domestic effluent discharged by the people. We are not issuing any direction in this behalf but we are certainly constrained to express our deep sense of regret at the total indifference of the Delhi Municipal Corporation in discharging its obligations under the law.

19. We have therefore decided to permit Shriram to restart its power plant as also plants for manufacture of caustic chlorine including its by-products like sodium sulphate, hydrochloric acid, stable bleaching powder, superchlor, and sodium hypochlorite, vanaspati refined oil including its by-products and recovery plants like soap, glycerine and technical hard oil and container works. But there are two orders which prohibit Shriram from operating these plants. One is the order dated 7th December, 1985 issued by the Inspector of Factories, Delhi, prohibiting Shriram from using the caustic chlorine and other plants till adequate safety measures are adopted and imminent danger to human life is eliminated and the other is the order dated 24th December, 1985 issued by the Assistant Commissioner (Factories) directing Shriram to stop industrial use of the premises on which the caustic chlorine plant is located. The validity of these two orders has been assailed by Shriram in Writ Petition No. 26 of 1986. We are not inclined at the present moment to vacate these two orders because the permission which we are granting by this judgment to Shriram to reopen these plants is as a temporary measure to be reviewed at some point of time in the future and we would therefore merely suspend the operation of these two orders until further directions with a view to enabling Shriram to restart these plants. But we are laying down certain conditions which shall be strictly and scrupulously followed by Shriram and if at any time it is found that any one or more of these conditions are violated, the permission granted by us will be liable to be withdrawn. We formulate these conditions as follows:-

(1) Since it is clear from the affidavits and the reports of the various Expert Committees that the management of Shriram was negligent in the operation and maintenance of the caustic chlorine plant and did not take the necessary measures for improving the design and quality of the plant and equipment and installing adequate safety devices and instruments with a view to ensuring the maximum safety of the workers and the community living in the vicinity and it is only after W.P. No. 12739 of 1985 was filed and all the giaring deviciencies were pointed out that the management carried out various alterations and adopted various measures in accordance with the recommendations made by Manmohan Singh Committee and Nilay Choudhary Committee, it is necessary that an Expert Committee should be appointed by us which will monitor the operation and maintenance of the plant and equipment and ensure the continued implementation of the recommendations of these two committees. We accordingly constituted an Expert Committee consisting of Shri Manmohan Singh, Shri P.R. Gharekhan and Professor P. Khanna of the Indian Institute of Technology, Bombay-and if Professor P. Khanna is not available for any reason, Dr. Sharma of the University Department of Chemical Technology, Bombay will take his place as a member of the Expert Committee-and this Expert Committee will inspect the caustic chlorine plant of Shriram at least once in a fortnight and examine whether the recommendations made by Manmohan Singh Committee and Nilay Choudhary Committee are being scrupulously implemented by the management. The Expert Committee will also examine the adequacy of the design, materials, fabrication etc. of the devices, instruments and other hardware calculated to monitor, warn, avoid, control and handle all situations arising on account of possible accidental release of chlorine gas, keeping in mind metereological factors, location of the plant and the largeness of the population exposed to hazard or risk. This examination may involve a thorough check and experimentation at site with a view to determining how far the safety measures adopted by the management are adequate to deal with a possible situation. The Expert Committee will submit a report of its examination to this Court immediately after completion of the examination with copies to the petitioner and Shriram. The first such examination shall be made by the Expert Committee within one week of the restarting of the caustic chlorine plant and it shall be followed by a second examination within

a further period of 15 days. If as a result of either such examination it is found that there is default on the part of the management in continuous compliance with any of the recommendations made by Manmohan Singh Committee and Nilay Choudhary Committee or the safety devices or instruments are not adequate or are not in operation or are not properly functioning the petitioner will be at liberty to immediately bring such default to the notice of this Court so that in that event, the permission granted to the management to restart the caustic chlorine plant may be revoked. Shriram will, within 3 days from today, deposit a sum of Rs. 30,000/- in this Court to meet the travelling, boarding and lodging expenses of the members of the Expert Committee.

(2) One operator should be designated as personally responsible for each safety device or measure and the head of the caustic chlorine division should be made individually responsible for the efficient operation of such safety device or measure. If at any time during examination by the Expert Committee or inspection by the Inspectorate it is found that any safety device or measure is inoperative or is not properly functioning, the head of the caustic chlorine plant as well as the operator incharge of such safety device or measure shall be held personally responsible. Their duty shall be not merely to report non-functioning or mal-functioning of any safety device or measure to the higher authority but to see that the operation of the entire plant is immediately shut-down, the safety device is urgently replenished and the plant does not restart functioning until such replenishment is completed.

(3) The Chief Inspector of Factories or any Senior Inspector duly nominated by him, who has necessary expertise in inspection of chemical factories, will inspect the caustic chlorine plant at least once in a week by paying surprise visit without any previous intimation and examine whether the recommendations of Manmohan Singh Committee and Nilay Choudhary Committee are being complied with by the management and whether the safety devices or instruments installed by the management are operative and are properly functioning or whether there are any defects or deficiencies in the operation and maintenance of the caustic chlorine plant and in the safety devices or instruments installed in the plant. The Chief Inspector of Factories or the Senior Inspector nominated by him, who carries out such inspection, shall immediately report to this Court and to the Labour Commissioner any default, deficiency or remissness in the part of the management which may be noticed by him in the course of such inspection and on such report being made, it will be open to the Labour Commissioner and the Chief Inspector of Factories to take such action as they think fit.

(4) The Central Board will also depute a Senior Inspector to visit the caustic chlorine plant and the Vanaspati Plant atleast once in a week without any prior notice to the management, for the purpose of ascertaining whether the effluent discharged from the Vanaspati Plant as also at the terminal out-let complies with the limiting standards laid down in the Consent Order issued under the Water Act and the particulate matter emitted by the stacks of the boilers in the power plant complies with the standards laid down in the Consent Order issued under the Air Act and if there is any

default in complying with the relevant standards in either case, such default shall be brought to the notice of this Court and the Central Board will be entitled to take such action as it thinks fit, including revocation of the relevant Consent Order.

(5) The management of Shriram will obtain an undertaking from the Chairman and Managing Director of the Delhi Cloth Mills Ltd. which is the owner of the various units of Shriram as also from the officer or officers who are in actual management of the caustic chlorine plant that in case there is any escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity, they will be personally responsible for payment of compensation for such death or injury and such undertakings shall be filed in Court within 1 week from today.

(6) There shall be a Committee of three representatives of Lokhit Congress Union and three representatives of Karamchari Ekta Union to look after the safety arrangements in the caustic chlorine plant. The function of this Committee will be to ensure that all safety measures are strictly observed and there is no non-functioning or malfunctioning of the safety devices and instruments and for this purpose, they will be entitled to visit any section or department of the plant during any shift and ask for any relevant information from the management. If there is any default or negligence in the observance of the safety measures and the maintenance and operation of the safety devices and instruments, this Committee will be entitled to bring such default or negligence to the notice of the management and if the management does not heed to the same, this Committee will be entitled to draw the attention of the Labour Commissioner to such default or negligence. The members of this Committee will be given proper and adequate training in regard to the functioning of the caustic chlorine plant and the operation of the safety devices and instruments and this will be done within a period of 2 weeks after the nomination of three representatives on the Committee is communicated by each of the two unions to the management.

(7) There shall be placed in each department or section of the caustic chlorine plant as also at the gate of the premises a detailed chart in English and Hindi stating the effect of chlorine gas on human body and informing the workmen and the people as to what immediate treatment should be taken in case they are affected by leakage of chlorine gas.

(8) Every worker in the caustic chlorine plant should be properly trained and instructed in regard to the functioning of the specific plant and equipment in which he is working and he should also be educated and informed as to what precautions should be taken and in case of leakage of chlorine gas, what steps should be taken to control and contain such leakage. The most effective way of giving such training and instruction would be through audio-visual programmes to be specially prepared by the management. Even after proper training and instruction is given it is likely that the workers engaged in the plant may, on account of lapse of time, forget the sequence of steps to be taken to monitor, warn, avoid, control and handle any chlorine leakage emergency and refresher courses should therefore be conducted atleast once in 6 weeks with mock trials.

(9) Loud speakers shall be installed all

around the factory premises for giving timely warning and adequate instructions to the people residing in the vicinity in case of leakage of chlorine gas.

(10) The management shall maintain proper vigilance with a view to ensuring that workers working in the caustic chlorine plant wear helmets, gas masks or safety belts as the case may be while working in the hazardous departments or sections of the plant and regular medical check-up of the workers shall be got carried out by the management in order to ensure that the workers are in good health.

(11) The management of Shriram will deposit in this Court a sum of Rs. 10 lacs as and by way of security for payment of compensation claims made by or on behalf of the victims of olium gas, if and to the extent to which such compensation claims are held to be well founded. This amount deposited by the management of Shriram will be invested by the Registrar of this Court in fixed deposit with a Nationalised Bank so that it earns interest and it will abide further directions of this Court. The management of Shriram will also furnish a bank guarantee to the satisfaction of the Registrar of this Court for a sum of Rs. 15 lacs which bank guarantee shall be encashed by the Registrar, wholly or in part, in case there is any escape of chlorine gas within a period of three years from today resulting in death or injury to any workman or to any persons or persons living in the vicinity. The amount of the bank guarantee when encashed shall be utilised in or towards payment of compensation to the victims of chlorine gas, the quantum of compensation being determinable by the District Judge Delhi on application for compensations being made to him by the victims of chlorine gas. The amount of Rs. 20 lacs shall be deposited and the bank guarantee for Rs. 15 lacs shall be furnished within a period of 2 weeks from today and on failure of the management of Shriram to do so, the permission granted by us by this Judgment to restart the caustic chlorine plant and other plants shall stand withdrawn.

20. We have formulated these conditions with a view to ensuring continuous compliance with the recommendations of Manmohan Singh Committee and Nilay Choudhary Committee and strict observance of safety standards and procedures, so that the possibility of hazard or risk to the workmen and the community is almost reduced to nil. We would like to point out that the caustic chlorine plant of Shriram is not the only plant which is carrying on a hazardous technology or are engaged in manufacture of hazardous goods and if proper and adequate precautions are not taken, they too are likely to endanger the life and health of the community. We would therefore suggest that a High Powered Authority should be set up by the Government of India in consultation with the Central Board for overseeing functioning of hazardous industries with a view to ensuring that there are no defects or deficiencies in the design, structure or quality of their plant and machinery, there is no negligence in maintenance and operation of the plant and equipment and necessary safety devices and instruments are installed and are in operation and proper and adequate safety standards and procedures are strictly followed. This is a question which needs serious attention of the Government of India and we would request the Government of India to take the necessary steps at the earliest, because the problem of danger to the health and well-being of the community on account of chemical and other hazardous industries has become a pressing problem in modern industrial society. It is also necessary to point that when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We cannot possibly adopt a policy of not having any Chemical or other hazardous industries merely because they pose hazard or risk to the community. If such a policy were adopted, it would mean the end of all progress and development. Such industries, even if hazardous, have to be set up since they are essential for economic development and advancement of well-being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of danger to the community and maximising safety requirements in such industries. We would therefore like to impress upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas where population is scarce and there is little hazard or risk to the community, and when hazardous industries are located in such areas, every care must be taken to see that large human habitation does not grow around them. There should preferably be a green belt of 1 to 5 k.m. width around such hazardous industries.

21. There is also one other matter to which we should like to draw the attention of the Government of India. We have noticed that in the past few years there is an increasing trend in the number of cases based on environmental pollution and ecological destruction coming up before the Courts. Many such cases concerning the material basis of livelihood of millions of poor people are reaching this Court by way of public interest litigation. In most of these cases there is need for neutral scientific expertise as an essential input to inform judicial decision making. These cases require expertise at a high level of scientific and technical sophistication. We felt the need for such expertise in this very case and we had to appoint several expert committees to inform the court as to what measures were required to be adopted by the management of Shriram to safeguard against the hazard or possibility of leaks, explosion, position of air and water etc. and how many of the safety devices against this hazard or possibility existed in the plant and which of them, though necessary, were not installed. We had great difficulty in finding out independent experts who would be able to advise the court on these issues. Since there is at present no independent and competent machinery to generate, gather and make available the necessary scientific and technical information, we had to make an effort on our own to identify experts who would provide reliable scientific and technical input necessary for the decision of the case and this was obviously a difficult and by its very nature, unsatisfactory exercise. It is therefore absolutely essential that there should be an independent Centre with professionally competent and public spirited experts to provide the needed scientific and technological input. We would in the circumstances urge upon the Government of India to set up an Ecological Sciences Research Group consisting of independent, professionally competent experts in different branches of science and technology, who would act as an information bank for the Court and the Government departments and generate new information according to the particular requirements of the Court or the concerned Government department. We would also suggest to the Government of India that since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up Environment Courts on the regional basis with one professional Judge and two experts drawn from the Ecological Science Research Group keeping in view the nature of the case and the expertise required for its adjudication. There would of-course be a right of appeal to this Court from the decision of the Environment Court.

22. We have in this judgment dealt only with the question as to whether Shriram should be allowed to restart its caustic chlorine plant and other plants manufacturing by products and if so, subject to what conditions. There are many other issues of seminal importance arising out of the claims for compensation by victims of olium gas which have to be considered by the Court. We have formulated these issues and asked the petitioner and those supporting him in W.P. 12739 of 1985 to file their written submissions on or before 24th February, 1986, and Shriram to file their written submissions on or before 28th February, 1986 so that we can take up the hearing of the writ petitions on 3rd March 1986.

23. Before we part with this judgment we would like to express our deep sense of appreciation for the bold initiative taken by the petitioner in bringing this public interest litigation before the Court. The petitioner has rendered signal service to the community by bringing this public interest litigation and he has produced before the court considerable material bearing on the issues arising in the litigation. He has argued his case with great sincerety and dedication and the people of Delhi must be grateful to him for espousing such a public cause. There is no doubt in our mind but for this public interest litigation brought by the petitioner, there would have been no improvement in the design, structure and quality of the machinery and equipment in the caustic chlorine plant nor would any proper and adequate safety devices and instruments have been installed nor would there have been any pressure on the management to observe safety standards and procedures and the possibility cannot be ruled out that perhaps some day olium gas tragedy might have been repeated but this time with chlorine gas which is admittedly more dangerous than olium gas. Though alone and single, he has fought a valiant battle against a giant enterprise and achieved substantial success. We would therefore as a token of our appreciation of the work done by the petitioner direct that a sum of Rs. 10,000/- be paid by Shriram to the petitioner by way of costs.

SCALE (PIL) 1981-97 1575

M.C. MEHTA ETC. SHRIRAM FOODS
AND FERTILISER INDUSTRIES & ANR. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI. AND G.L. OZA, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COMPENSATION — SHRIRAM

Order dated February 24, 1986 in W.P. (C) No. 12739 of 1985 with W.P. (C) No. 26 of 1986. [1986(1) SCALE 341]

FOODS & FERTILIZER INDUSTRIES — Gas Leakage — (Reported in 1986 (1) SCALE 199) — Certain directions issued.

1. The time stipulated by us for filing the undertaking by the Chairman and Managing Director of the Delhi Cloth Mills Ltd. and officer or officers, who are in actual management of the caustic chlorine plant, shall stand extended for one week from today. If the management of Shriram wants to apply for any modification or variation of the conditions imposed by us, it may do so by filing an application for that purpose by 4.00 p.m. on February 25, 1986 and supply copies of such application to the petitioner and to the learned advocates appearing on behalf of the other parties. It will be open to the petitioner and the other parties to file their replies to such application as early as possible. The application, if made, shall be taken up for hearing at 4.00 p.m. on February 27, 1986.

2. Since a large number of persons have filed claims for compensation and it is not possible for the limited number of Doctors specified by us to conduct medical examination of these claimants for compensation, we would request the Medical Superintendents of Willingdon Hospital, Lok Nayak Jayaprakash Hospital and Safdarjung Hospital to nominate the Heads of Department and any other senior Doctor or Doctors having expertise in respiratory diseases, anasthesia and problems relating to ENT and eyes, for carrying out medical examination of the claimants for compensation who come before them or are brought before them. We would also request the Director of All India Institute of Medical Sciences to nominate Dr. R.C. Pandey, Associate Professor of Medicines who has expertise in respiratory diseases, for making his services available for Medical examination of claimants for compensation. We are extremely thankful to the Director of All India Institute of Medical Sciences and the Medical Superintendents of the other Hospitals for making the services of Doctors available for this purpose and extending full co-operation to this Court. We would also direct the Doctors who have conducted the medical examination of the claimants for compensation to forward all basic documents, materials and data to the Registry of this Court along with their reports, as these documents, materials and data may be required by us when we consider the question of compensation.

3. Pursuant to the order made by us on January 10, 1986 the Delhi Administration has deposited Rs. 5,000/- with the Secretary, Delhi State Legal Aid and Advice Board for the purpose of meeting the costs, charges and expenses of medical examination of the claimants for Compensation. We are informed by Mr. Raju Ramachandran, learned counsel, that this amount has been exhausted and that some more amount will be required to be deposited because there are still a large number of claimants for compensation who are yet to be medically examined. We would, therefore, direct the Delhi Administration to deposit a further sum of Rs. 10,000/- (Rupees ten thousand) with the Secretary, Delhi State Legal Aid and Advice Board for the purpose of meeting the costs, charges and expenses of medical examination. If any surplus amount remains with the Secretary, Delhi State Legal Aid and Advice Board after meeting costs, charges and expenses of such medical examination, it shall be returned to the Delhi Administration.

SCALE (PIL) 1981-97 1577

M.C. MEHTA & ANR. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI., D.P. MADON AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COMPENSATION — SHRIRAM FOODS & FERTILIZER INDUSTRIES — GAS LEAKAGE — Application for modification of order, dated 17-2-1986 (Reported in 1986(1) SCALE 199).

1. This application has been made by Shriram Foods and Fertiliser Industries (hereinafter referred to as 'Shriram') for clarification in respect of certain conditions set out in the Order passed by us on 17th February, 1986 in Writ Petitions Nos. 12739 of 1985 and 26 of 1986. Though the application has been styled as an application for clarification, it is really and in substance, an application for modification of some of the conditions contained in the Order. We passed the Order permitting Shriram to restart its power plant as also plants for manufacture of caustic chlorine including its by-products like sodium sulphate hydrochloric acid, stable bleaching powder, superchlor and sodium hypochlorite and vanaspati refined oil including its by-products and recovery plants like soap, glycerine and technical hard oil, but we made the permission subject to certain conditions which, we insisted, should be strictly and scrupulously followed by Shriram and we made it clear that if at any time it is found that any one or more of these conditions are violated, the permission would be liable to be withdrawn. There are three out of these conditions in respect of which modification is sought by Shriram on the ground that compliance with these conditions would entail certain operational and practical difficulties.

2. The first condition in respect of which modification is sought by Shriram is condition No. 2 which runs as follows :

> "(2) One operator should be designated as personally responsible for each safety device or measure and the head of the caustic chlorine division should be made individually responsible for the efficient operation of such safety device or measure. If at any time during examination by the Expert Committee or inspection by the Inspectorate it is found that any safety device or measure is inoperative or is not properly functioning, the head of the caustic chlorine plant as well as the operator incharge of such safety device or measure shall be held personally responsible. Their duty shall be not merely to report non-functioning or mal-functioning of any safety device or measure to the higher authority but to see that the operation of the entire plant is immediately shut-down, the safety device is urgently replenished and the plant does not restart functioning until such replenishment is completed."

It is urged on behalf of Shriram that there are more than 150 safety devices in the plant and it is not possible to have an individual operator to be made personally responsible for each safety device and, moreover, considering the magnitude of the responsibility for efficient operation of a safety device, it would not be proper to impose such responsibility on an operator who is merely a workman but that such responsibility should be cast on an officer to

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Order dated March 10, 1986 in Civil Misc. Petition No. 6263 of 1986 in W.P. (C) No. 12739 of 1985 and W.P. (C) No. 26 of 1986. [1986(1) SCALE 397] be placed in-charge of a group of safety devices. Shriram also submitted that the condition that 'if any safety device is found to be non-functioning or mal-functioning, the operation of the entire plant should immediately be shut down' also requires to be modified, firstly, because failure of every kind of safety device need not require the shutting down of the entire plant from the safety point of view; secondly, because the operator incharge of any particular safety device would not have control or knowledge of the entire plant and he would not, therefore, be in a position to take a decision regarding the stoppage of the plant and, thirdly, because frequent stoppage and restart of the plant would by itself be a potent source of hazard. We find considerable force in this contention urged on behalf of Shriram. We agree that every kind of safety device installed in the plant need not require the shutting down of the entire plant in the event of its non-functioning or mal-functioning. There are three different categories of safety devices which have to be taken into account. The first category consists of safety devices which are for the entire factory including the caustic chlorine plant such as fire-tender, loud speakers, wind direction recorder, etc; the second category consists of safety devices exclusively for the caustic chlorine plant such as neutralisation system and auction control system and the last category consists of safety devices for different components of the machinery and equipment such as load cell which is a safety device for storage tank in the caustic chlorine plant. Some of these safety devices are critical while some others are not. Where a safety device is not critical, it may not be necessary to shut down the plant in case such safety device is found to be non-functioning or mal-functioning, as for example where a safety device is attached to a component which can be easily isolated and repaired or replenished without shutting down the plant. Even where a safety device is critical and it is found to be non-functioning or mal-functioning, it may be possible to take immediate remedial action without going to the extreme of shutting down the plant, as for example, where a safety device has an effective back-up system. We also agree that it would not be practicably feasible to place one operator in-charge of each safety device and it would not be desirable to place the responsibility for effective monitoring and functioning of the safety device on an operator who is merely a workman, but instead such responsibility should be cast on an officer who should be placed incharge of a group of safety devices. We would therefore direct the Committee of Experts appointed by us to scrutinise the safety devices which are installed for the entire factory as also the safety devices installed in the caustic chlorine plant for the purpose of evaluating as to which are critical and which are not critical. The criterion for determining which safety devices are critical or non-critical shall be whether the particular safety device is of such a nature as to imperil the safety of the plant in case it is found to be non-functioning or mal-functioning, so as to require immediate shutting down of the plant until the safety device is repaired or replenished. We would direct that if any safety device designed by the Committee of Experts to be critical is found not functioning or mal-functioning and a report to that effect is made by the officer responsible for such safety device, the management of Shriram will immediately shut down the operation of the plant and ensure that the plant does not restart functioning until such safety device is repaired or replenished. Even where a safety device is designated by the Committee of Experts to be non-critical in the sense that its functioning or mal-functioning need not necessarily require shutting down of the plant, the Committee of Experts will determine as to what remedial action should immediately be taken in case it is found that such safety device is non-functioning or mal-functioning and on the officer responsible for such safety device drawing the attention of the management to non-functioning or mal-functioning of such safety device, the management will immediately take the remedial action prescribed by the Committee of Experts. The Committee of Experts will also determine how and in what manner the different safety devices can be grouped together so that one officer can be made responsible for each group of safety devices. The Committee of Experts will carry out this assignment within 7 days from the starting of the caustic chlorine plant and submit a report to this Court with copies to the petitioner and to the Delhi Administration, the Chief Inspector of Factories, the Management of Shriram, Lokhit Congress Union and Karamchari Ekta Union. The Officer who is placed in-charge of each group of safety devices will be responsible for the non-functioning or mal-functioning of any safety devices under his charge. Besides the officer who is designated as personally responsible for each safety device or measure, the head of the caustic chlorine division would be individually responsible for the efficient operation of such safety device or measure and if at any time during examination by the Committee of Experts or inspection by the Inspectorate, it is found that any safety device or measure is inoperative or is not properly functioning the head of the caustic chlorine plant as well as the officer-in-charge of such safety device shall be held personally answerable and it will be the responsibility of the head of the caustic chlorine division and the management to immediately take proper remedial action in that behalf.

3. The next contention in respect of which modification is sought by Shriram in Condition No.5 which runs as follows:

> "(5) The management of Shriram will obtain an undertaking from the Chairman and Managing Director of the Delhi Cloth Mills Ltd. which is the owner of the various units of Shriram as also from the officer or officers who are in actual management of the caustic chlorine plant that in case there is any escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity, they will be personally responsible for payment of compensation for such death or injury and such undertakings shall be filed in Court within 1 week from today".

The contention of Shriram is that it is not clear as to who can be described as officer in actual management of the caustic chlorine plant and that this particular direction requires clarification so that the management can obtain the necessary undertaking from such officer. So far as this difficulty pointed out on behalf of Shriram is concerned, we would like to clarify that the officer whose undertaking is required to be taken under the directions given in our Order dt. 17th February, 1986, is the officer who is the 'occupier' under the Factories Act, 1948 because he is the person who has actual control over the affairs of the factory and/or the officer who is in-charge of the actual operation of the caustic chlorine plant and who is responsible to the management for the operation of the plant. But it was urged on behalf of Shriram that if we insist upon an undertaking to be given by any such officer or officers it would be impossible to secure the services of any competent officers because they would not be willing to accept employment in a situation where they are made responsible not only for their own acts or omissions but also for the acts or omission of others over whom they have no control. It was therefore seriously contended on behalf of Shriram that the condition requiring undertaking to be given by such officer or officers should be deleted. We are unable to persuade ourselves to accept this contention of Shriram. If the contention of Shriram is-and that is the contention which has seriously been pressed on behalf of Shriram in support of their plea that the caustic chlorine plant should be allowed to be reopened-that there is no risk or hazard to the community in the operation of the caustic chlorine plant, there is no reason why the officer or officers who have ultimate control over the affairs of the caustic chlorine plant and/or who are responsible to the management for the efficient operation of the caustic chlorine plant should hesitate to give an undertaking to the Court that in case of death or injury arising on account of escape of chlorine gas, they would be personally responsible. But while making this comment we are not unmindful of the fact that if absolute unlimited liability were to be imposed on any officer or officers in the employ of Shriram for death or injury arising on account of possible escape of chlorine gas, many competent persons would shy away from accepting employment in Shriram and that would make it difficult for Shriram to have really competent and professionally qualified persons to manage and operate the caustic chlorine plant. We would therefore modify the condition prescribed by us by providing that undertaking shall be obtained from the officer who is 'occupier' of the caustic chlorine plant under the Factories Act, 1948 and/or the officer who is responsible to the management for the actual operation of the caustic chlorine plant as its head and such undertaking shall stipulate that in case there is any escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity the officer concerned will be personally responsible, to the extent of his annual salary with allowances, for payment of compensation for such death or injury but if he shows that such escape of gas took place as a result of act of God or vis majeur or sabotage or that he had exercised all due diligence to prevent such escape of gas, he shall be entitled to be indemnified by Shriram.

4. So far as the undertaking to be obtained from the Chairman and Managing Director of Shriram is concerned it was pointed out by Shriram that Delhi Cloth Mills Ltd. which is the owner of Shriram has several units manufacturing different products and each of these units is headed and managed by competent and professionally qualified persons who are responsible for the day to day management of its affairs and the Chairman and Managing Director is not concerned with day to day functioning of the units and it would not therefore be fair and just to require the Chairman and Managing Director to give an undertaking that in case of death or injury resulting on account of escape of chlorine gas, the Chairman and Managing Director would be personally liable to pay compensation. We find it difficult to accept this contention urged on behalf of Shriram. We do not see any reason why the Chairman and/or Managing Director should not be required to give an undertaking to be personally liable for payment of compensation in case of death or injury resulting on account of escape of chlorine gas, particularly when we find that according to the reports of various Expert Committees which examined the working of caustic chlorine plant, there was considerable negligence in looking after its safety requirements and in fact, considerable repair and renovation with and installation of safety devices had to be carried out at a fairly heavy cost in order to reduce the element of risk or hazard to the community. We may however make it clear

that the undertaking to be given by the Chairman and or Managing Director may provide that no liability shall attach to the Chairman and/or Managing Director if he can show that the escape of chlorine gas was due to an Act of God or vis mejeur or sabotage. But in all other cases the Chairman or Managing Director must hold himself liable to pay compensation. That alone in our opinion would ensure proper and adequate maintenance of safety devices and instruments and operation of the caustic chlorine plant in a manner which would considerably reduce, if not eliminate, risk or hazard to the workmen and to the people living in the vicinity.

5. The last contention in respect of which modification is sought by Shriram is Condition No. 6 which provides as follows :

> "(6) There shall be a Committee of three representatives of Lokhit Congress Union and three representatives of Karamchari Ekta Union to look after the safety arrangements in the caustic chlorine plant. The function of this Committee will be to ensure that all safety measures are strictly observed and there is no non-functioning of the safety devices and instruments and for this purpose, they will be entitled to visit any section or department of the plant during any shift and ask for any relevant information from the management. If there is any default or negligence in the observance of the safety measures and the maintenance and operation of the safety devices and instruments, this Committee will be entitled to bring such default or negligence to the notice of the management and if the management does not heed to the same, this Committee will be entitled to draw the attention of the labour Commissioner to such default or negligence. The members of this Committee will be given proper and adequate training in regard to the functioning of the caustic chlorine plant and the operation of the safety devices and instruments and this will be done within a period of 2 weeks after the nomination of three representatives on the Committee is communicated by each of the two Unions to the management."

The contention of Shriram in regard to this condition is that it would not be feasible for Shriram to train the Committee of representatives of the two unions (herein after referred to as the Committee of Workmen) to such an extent that they would acquire sufficient knowledge and expertise to ensure proper functioning of various safety devices and moreover some of the members of the Committee of Workmen would be performing essential operational duties and they cannot be permitted to leave their duties and go for inspection at any time they like without prior authorisation from the officer in-charge of the particular department in which they are working nor can they be permitted to walk into any part of the caustic chlorine plant for the purpose of inspection, because the caustic chlorine plant is high risk security area which has been cordoned off by the management and put under round the clock security and the entry of any person or persons to this area has to be regulated by proper authorisation. There is some force in this contention urged on behalf of Shriram. There are bound to be some safety devices and instruments of highly sophisticated nature which require technical knowledge in order to appreciate how they are functioning and it may not be possible for the Committee of workmen to effectively supervise the functioning of such safety devices and instruments. But even so, we do not see any reason why the Committee of Workmen should not be given an opportunity of participating in this task of ensuring proper observance of safety measures. The management of Shriram can certainly give to the Committee of Workmen basic knowledge and information in regard to the operation of the safety devices and instruments, even if some of these are of a sophisticated nature. We do not subscribe to the view that workmen who have been working for years in a plant cannot acquire some elementary knowledge about the operation of various safety devices in the plant. We have known of various instances where ordinary workmen, though not highly educated, have been able to acquire sufficient expertise, through long experience, in the operation of the machinery and equipment which they are working. We do not therefore propose to modify this part of the condition imposed by us. We may however make it clear that at least two out of the three representatives who are appointed on the Committee of Workmen by each Union should be workmen who have experience of working in the caustic chlorine plant. We must also clarify, in agreement with the management, that the Workmen who are members of the Committee of Workmen should not leave their duty for going on inspection without giving prior intimation to the officer in-charge and they should give at least half an hour's notice to the officer in-charge so that the essential functions which they are discharging are not disturbed. The Committee of Workmen should also give prior intimation of at-least half an hour to the officer in-charge of the caustic chlorine plant that they propose to come for inspection of any particular department or departments so that the necessary safety and security precautions can be taken. With this small modification, Condition No. 6 stipulated by us will stand intact.

6. We may reiterate that the permission granted by us to Shriram to reopen the caustic chlorine plant is subject to the conditions set out in our Order dt. 17th February, 1986 as modified by this Order. But if for any reason Shriram does not comply with any of these conditions and is therefore unable to reopen the caustic chlorine plant, it will be open to Shriram to restart the other plants in respect of which permission has been given by us by our Order dt. 17th February, 1986 so long as Shriram can do so without operating the caustic chlorine plant.

7. The application will accordingly stand disposed of in terms of this Order.

SCALE (PIL) 1981-97 1582

M.C. MEHTA ETC. ETC. SHRI RAM FOODS & FERTILIZER D.C.M. LTD. & ORS. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: R.S. PATHAK, CJI., RANGANATH MISRA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COMPENSATION — SHRIRAM FOODS & FERTILIZER INDUSTRIES — Judgment on compensation to the persons who had suffered harm on account of escape of oleum gas (reported in 1986(2) SCALE 1188) — Writ Petition filed on the said judgment — Whether the same is maintainable.

Order dated February 3, 1987 in W.P. (C) No. S. 12739/85 & 26/86 with CMP No. 2983/87 (in W.P. No. 12739/85) with W.P. No. 138/87. [1987(1) SCALE 378]

1. The question at the outset before us is whether the Writ Petition is maintainable or the petitioner should have applied for review of the impugned Judgment passed by this Court. Two weeks are allowed to the petitioners for filing their written submissions on this point. Two weeks thereafter are allowed to the respondents for filing their written submissions. The Writ Petitions will be listed on March 24, 1987, for consideration of this matter.

SCALE (PIL) 1981-97 1583

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — VEHICLES — Further directions given.

1. On 23rd September, 1986 this Court *inter alia* directed "Delhi Administration (respondent No.2) will file affidavit within two weeks from today specifying what steps are being taken for controlling pollution as emission of smoke, noise etc. from vehicles plying in Delhi. Notice to this effect will go to the Delhi Administration immediately." On 25th September, 1986, notice was issued from this Court, and we have no reason to believe that such notice has not been served. On the other hand the petitioner, Mr. Mehta, states that counsel for the Delhi Administration has appeared and had requested for time to file the counter-affidavit. Though more than six months have elapsed since the order was made, there has been no compliance by the Delhi Administration. In this circumstances, we take it that the Delhi Administration does not want to file any counter-affidavit or take steps in this case and is set ex-parte.

2. The Union of India has also not entered appearance and has not taken any steps in this case inspite of service of notice. Accordingly, Union of India is set ex-parte. No hearing shall be afforded to respondents Nos. 1 and 2 unless they formally apply for recall of today's directions and leave on terms of the costs is granted.

3. A notice shall be issued to the Chief Secretary to the Delhi Administration to show cause as to why there has been failure to comply with the directions given by the Court. Compliance with this notice has nothing to do with the merits of the matter, in respect of which the administration has been debarred from participating in the hearing. The affidavit of the Chief Secretary to be personally given should be before the Court on the 4th May, 1987. The matter is adjourned to be listed on 4th May, 1987.

Order dated April 21, 1987 in W.P. No. 13029 of 1985. [1987(1) SCALE 1271]

SCALE (PIL) 1981-97 1583

M.C. MEHTA ETC. ETC. M.C. MEHTA & ANR. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: R.S. PATHAK CJI. AND RANGANATH MISRA, J.

Order dated March 24, 1987 in C.M.P. No. 4998 of 1987 and CMP No. 7745/87 (In WP. Nos. 12739/85 & 26/86). [1987(1) SCALE 1271]

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COMPENSATION — SHRIRAM FOODS & FERTILIZER INDUSTRIES — Award for compensation to persons who had suffered harm on account of escape of oleum gas (reported in 1986 (1) SCALE 199 & 1986(2) SCALE 1188) — Further directions given.

1. *In Item No. 1:* The time fixed by this Court in its Judgment dated December 20, 1986 for the institution of suits by the Delhi Legal Aid and Advice Board is extended by further three months from today.

2. This extension has been necessitated by the difficulty experienced by the Delhi Legal Aid and Advice Board in obtaining funds from the Delhi Administration. It may be noted that the Judgment aforesaid of this Court directed the Delhi Administration to provide necessary funds for that purpose to the Delhi Legal Aid and Advice Board. We trust that the Delhi Administration will take expeditious steps for complying with the direction made by this Court in the Judgment aforesaid.

3. The application is disposed of accordingly.

4. *In Item No. 24:* The Delhi Legal Aid and Advice Board will issue public notice inviting claims consequent upon the Judgment of this Court dated December 20, 1986. Public notice shall be issued only once as early as possible. The Delhi Legal Aid and Advice Board will scrutinise all claims filed before it including the earlier 1800 claims before initiating actions in respect thereof in order to prevent frivolous action being instituted.

5. The Civil Miscellaneous Petition is disposed of accordingly.

SCALE (PIL) 1981-97 1584

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — GAMA CHAMBER AT JNU — Further directions given.

1. Heard learned counsel for the parties. It is stated now that the recharging at Bombay is being done and within a few days the Gama Chamber would be ready for being repatriated to Delhi. The appropriate Certificates as mentioned in our order dated 12th March, 1987 as would be available from Bhabha Atomic Research Centre should be obtained and the Chamber should be brought over to Delhi alongwith the Certificate when the recharging is over, to be housed within the campus. After it is housed the rest of the examinations directed in our order dated 12th March, 1987 shall be undertaken so that the rest of the certificates may be made available. It is stated that if expeditious steps are taken the repatriation would be possible by 30th April, 1987.

2. The matter is to be listed on 6th May, 1987 for further directions.

Order dated April 21, 1987 in W.P. (C) 1043/1986. [1987(1) SCALE 1299]

SCALE (PIL) 1981-97 1585

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: E.S. VENKATARAMIAH AND K.N. SINGH, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — WATER POLLUTION — WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974 — SECTION 24 r.w. ENVIRONMENT (PROTECTION) ACT, 1986 r.w. CONSTITUTION — ARTICLE 252(I) r.w. C.P.C.O. 1 R.8 — Whether industrialists, municipal corporations and town municipal councils having jurisdiction over the areas through which the river Ganga flows can allow the trade effluents and the sewage into the river Ganga without appropriately treating them before discharging them into the river — Court issues directions in regard to tanneries.

Venkataramiah, J.— This is a public interest litigation. The petitioner who is an active social worker has filed this petition *inter alia* for the issue of a writ/order/direction in the nature of mandamus to the respondents other than Respondents 1, and 7 to 9 restraining them from letting out the trade effluents into the river Ganga till such time they put up necessary treatment plants for treating the trade effluents in order to arrest the pollution of water in the said river. Respondent 1 is the Union of India. Respondent 7 is the Chairman of the Central Board for Prevention and Control of Pollution, Respondent 8 is the Chairman, Uttar Pradesh Pollution Control Board and Respondent 9 is the Indian Standards Institute.

2. Water is the most important of the elements of nature. River valleys are the cradles of civilization from the beginning of the world. Aryan civilization grew around the towns and villages on the banks of the river Ganga. Varanasi which is one of the cities on the banks of the river Ganga is considered to be one of the oldest human settlements in the world. It is the popular belief that the river Ganga is the purifier of all but we are now led to the situation that action has to be taken to prevent the pollution of the water of the river Ganga since we have reached a stage that any further pollution of the river water is likely to lead to a catastrophe. There are today large towns inhabited by millions of people on the banks of the river Ganga. There are also large industries on its banks. Sewage of the towns and cities on the banks of the river and the trade effluents of the factories and other industries are continuously being discharged into the river. It is the complaint of the petitioner that neither the Government nor the people are giving adequate attention to stop the pollution of the river Ganga. Steps have, therefore, to be taken for the purpose of protecting the cleanliness of the stream in the river Ganga, which is in fact the life sustainer of a large part of the Northern India.

3. When this petition came up for preliminary hearing, the Court directed the issue of notice under order 1 Rule 8 of the Code of Civil Procedure treating this case as a representative action by publishing the gist of the petition in the newspapers in circulation in Northern India and calling upon all the industrialists and the municipal corporations and the town municipal councils having jurisdiction over the areas through which the river Ganga flows to appear before the Court and to show cause as to why directions should not be issued to them as prayed by the petitioner asking them not to allow the trade

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Order dated September 22, 1987 in W.P. No. 3727 of 1985 [1987(2) SCALE 611] effluents and the sewage into the river Ganga without appropriately treating them before discharging them into the river. Pursuant to the said notice a large number of industrialists and local bodies have entered appearance before the Court. Some of them have filed counter-affidavits explaining the steps taken by them for treating the trade effluents before discharging them into the river. When the above case came up for consideration before the Court on the last date of hearing we directed that the case against the tanneries at Jajmau area near Kanpur would be taken up for hearing first. Respondents 14 to 87 and 89 are the tanneries near Kanpur. Of them respondents 16 to 32, 34 to 36, 43, 47, 51, 52, 54, 55, 57, 58, 60 to 62, 64, 67 to 69, 72, 74, 75, 77 to 82, 85, 87 and 89 are represented by the counsel. The remaining tanneries did not appear before the Court at the time of the hearing nor were they represented by any counsel.

4. Before proceeding to consider the facts of this case it is necessary to state a few words about the importance of and need for protecting our environment. Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51-A of the Constitution imposes as one of the fundamental duties on every citizen the duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The proclamation adopted by the United Nations Conference on the Human Environment which took place at Stockholm from 5th to 16th of June, 1972 and in which the Indian delegation led by the Prime Minister of India took a leading role runs thus:

> "1. Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself.
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> 2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.
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> 3. Man has constantly to sum up experience and go on discovering, inventing, creating. In our time man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth; dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social health of man, in the man-made environment; particularly in the living and working environment.
>
> A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their

environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. They are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but clam state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build in collaboration with nature a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind - a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world wide economic and social development.

To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and National Governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. International co-operation is also needed in order to raise resources to support the developing countries carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive co-operation among nations and action by international organizations in the common interest. The Conference calls upon the Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity."

The proclamation also contained certain common convictions of the participant nations and made certain recommendations on development and environment. The common convictions stated include the conviction that the discharge of toxic substances or of other substances and the release of heat in such quantities or concentrations as to exceed the capacity of environment to render them harmless must be halted in order to ensure that serious or irreversible damage is not inflicted upon eco systems, that States shall take all possible steps to prevent pollution of the seas so that hazards to human health, harm to living resources and marine life, damage to the amenities or interference with other legitimate uses of seas is avoided that the environmental policies would enhance and not adversely affect the present and future development potential of development countries, that science and technology as part of their contributions to economic and social development must be applied with identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind, that States have the responsibility to ensure that activities of exploitation of their own resources within their jurisdiction are controlled and do not cause damage to the environment of other States or areas beyond the limit of national jurisdiction, that will be essential in all cases to consider the systems of values prevailing in each country and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost and that man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. These are only some of the statements of principles proclaimed by the Stockholm Conference.

(Vide Lal's Commentaries on Water and Air Pollution Laws (2nd Edn.) page 6-7)

5. Realising the importance of the prevention and control of pollution of water for human existence Parliament has passed the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974) (hereinafter referred to as 'the Act') to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions resulting thereto and for matters connected therewith. The Act was passed pursuant to resolutions passed by all the Houses of Legislatures of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal under clause (1) of Article 252 of the Constitution to the effect that the prevention and control of water pollution should be regulated in those States by Parliamentary legislation. The Act has been since adopted by the State of Uttar Pradesh also by resolutions passed in that behalf by the Houses of Legislature of the said State in the year 1975 (vide notification No. 897/ix-3-100-74 dated 3.2.1975). Section 24 of the Act prohibits the use of any stream or well for disposal of polluting matter etc. It provides that subject to the provisions of the said section no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter whether directly or indirectly into any stream or well or no person shall knowingly cause or permit to enter into any stream any other matter which may tend other directly or in combination with similar matters to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences. The expression stream is defined by section 2(j) of the Act as including river, water course whether flowing or for the time being dry, inland water whether natural or artificial, sub-terranean waters, sea or tidal waters to such extent or as the case may be to such point as the State Government may be notification in the Official Gazette, specify in that behalf. Under the Act it is permissible to establish a Central Board and the State Boards. The functions of the Central Board and the State Boards are described in section 16 and 17 respectively. One of the functions of the State Board is to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents, and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification and the system for the disposal of sewage or trade effluents. 'Trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any trade or industry, other than domestic sewage. The State Board is also entrusted with the work of laying down standards of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents. The State Board is also entrusted with the power of making application to courts for restraining apprehended pollution of water in streams or well. Notwithstanding the comprehensive provisions contained in the Act no effective steps appear to have been taken by the State Board so far to prevent the discharge of effluents of the Jajmau near Kanpur to the river Ganga. The fact that such effluents are being first discharged into the municipal sewerage does not absolve the tanneries from being proceeded against under the provisions of the law in force since ultimately the effluents reach the river Ganga from the sewerage system of the municipality.

6. In addition to the above Act, Parliament has also passed the Environment (Protection) Act, 1986 (29 of 1986) which has been brought into force throughout India with effect from November 19, 1986. Section 3 of this Act confers power on the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. (Vide section 2(a) of the Environment (Protection) Act, 1986). Under section 3(2)(iv) of the said Act the Central Government may lay down standards for emission or discharge of environmental pollutants from various sources whatsoever. Notwithstanding anything contained in any other law but subject to the provisions of the Environment (Protection) Act, 1986, the Central Government may under section 5 of the Act, in the exercise of its powers and performance of its functions under that Act issue directions in writing to any person, officer or authority and such authority bound to comply with such directions. The power to issue directions under the said section includes the power to direct the closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water or any other service. Section 9 of the said Act imposes a duty on every person to take steps to prevent or mitigate the environmental pollution. Section 15 of the said Act contains provisions relating to penalties that may be imposed for the contravention of any of the provisions of the said Act or directions issued thereunder. It is to be noticed that not much has been done even under this Act by the Central Government to stop the grave public nuisance caused by the tanneries, at Jajmau, Kanpur.

7. All the tanneries at Jajmau, Kanpur which were represented by counsel, except respondent Nos. 87 and 89 have relied upon a common counter-affidavit filed by them and their case is argued by Shri S.K. Dholakia and Shri Mukul Mudgal. Respondent No. 87 is represented by Shri R.P. Gupta and respondent No. 89 is represented by Shri P. Narasimhan. There is not much dispute on the question that the discharge of the trade effluents from these tanneries into the river Ganga has been causing considerable damage to the life of the people who use the water of the river Ganga and also to the aquatic life in the river. The tanneries at Jajmau in Kanpur have themselves formed an association called Jajmau Tanners Pollution Control Association with the objects among others:

> (1) To establish, equip and maintain laboratories, workshops, institutes, organisations and factories for conducting and carrying on experiments and to provide funds for the main objects of the Company.
>
> (2) To procure and import wherever

> necessary the chemicals etc. for the purpose of pollution control in tanning industries.
>
> (3) To set up and maintain common effluent treatment plant for member tanners in and around Jajmau.
>
> (4) To make periodical charges on members for the effluent treatment based on the benefit he/it derives from time to time to meet the common expenses for maintenance, replacement incurred towards effluent treatment.

8. In the Fiscal Plan for setting up common Effluent Treatment Plants for Indian Tanning Industry (March, 1986) prepared by the committee constituted by the Directorate General of Technical Development (Government of India) it is observed thus:

> "Leather industry is one of the three major industries besides paper and textiles consuming large quantities of water for processing of hides and skins into leather. Naturally most of the water used is discharged as wastewater. The wastewater contains putrescible organic and toxic inorganic materials which when discharged as such will deplete dissolved oxygen content of the receiving water courses resulting in the death of all aquatic life and emanating foul odour. Disposal of these untreated effluents on to land will pollute the ground water resources. Discharging of these effluents without treatment into public sewers results in the choking of sewers.
>
> Realising the importance of keeping the environment clean, the Government of India has enacted the Water Pollution Control Act (Central Act 6 of 1974) and almost all the State Governments have adopted the Act and implementing the Act by forming the Pollution Control Boards in their respective states. The Pollution Control Boards have been insisting that all industries have to treat their effluents to the prescribed standards and leather industry is no exception to this rule. Tanneries situated all over the country have faced with the problem of treating their effluents. Seized with the problem of finding out a solution, the Central Leather Research Institute, Madras has brought out a Management Investment Report (CLRI Core Committee Report) as early as 1976 which contains 14 flow sheets indicating the treatment technologies for various types of leather processing techniques, quantity of effluents etc. including the cost of treatment."

9. A monograph entitled 'Treatment Technology of Tannery Effluents' prepared by S. Rajamani, W. Madavakrishna and G. Thyagarajan of the Central Leather Research Institute, Adyar, Madras states that generally the wastewater from beam house process namely soaking, liming, deliming etc. are highly alkaline containing decomposing organic matter, hair, lime sulphide etc. and is nearly ten times as strong as domestic sewage and refers to the various methods by which the effluents of the tanneries could be treated before their discharge into any river. They recommend four types of wastewater treatment technology so far as the tanneries are concerned - (1) segregation or mixing of suitable sectional waste water from different processes; (2) primary treatment; (3) secondary biological treatment; and (4) disposal of solid wastes from the treatment system. The said monograph explains the work at the primary treatment unit thus:

> "The primary treatment units principally comprise of coarse screens, two numbers of setting tanks and sludge drying beds. The settling tank, each of about 1-2 days capacity acts as an equalisation-cum-settling tank as well. As an alternative, clarifier can be provided in place of settling tank for treating higher capacity.

> effluents. Depending on the quality of composite effluent, addition of neutralising chemicals like lime, alum, ferric chloride etc. would be required for effective precipitation of chromium and removal of suspended solids in the sedimentation process. The sludge from the settling tanks and clarifier is removed and dried on sludge drying beds made up of filtering media gravel, sand and supporting masonary structure. For operational reasons, sludge drying beds are divided into four or more compartments. The dried sludge from the sludge drying beds can be used as manure or for landfill if it is vegetable tannery waste. In case of chrome tannery waste, the dried sludge should be buried or disposed off suitably as per the directions of regulatory agencies and local bodies".

10. The secondary treatment units are explained in the said monograph thus:

> "The pre-treated effluent needs suitable secondary biological treatment to meet the pollution control standards. The general biological treatment units which can be adopted under Indian conditions are anaerobic lagoon, aerated lagoon, extended aeration systems like oxidation ditch, activated sludge process etc.
>
> Anaerobic lagoon is a simple anaerobic treatment units suitable for effluents with high BOD like vegetable tannery (Raw to E.1) waste water. In depth of the lagoon varies from 3-5 metres and detention time from 10-20 days depending upon the pollutional load and atmospheric conditions. This is an open type digester with no provision for gas collection. No power is required for this system and its performance is proved to be efficient in South Indian conditions.
>
> Anaerobic contact filter is also an anaerobic treatment unit. This is a closed tank type unit made up of R.C.C. or masonry structure filled up with media like broken granite stones etc. This unit occupies less land area since the detention time is about 1-2 days only. This system is reported to be efficient for treating high organic load, but the capital cost would be comparatively high.
>
> Aerated lagoon is a shallow water tight pond of about 2-3 metres depth with a detention time of about 4-6 days. Fixed or floating type surface aerators are provided to transfer oxygen from atmospheric air to the effluent for biological treatment using micro-organisms under aerobic conditions. The system is suitable for treating low organic load.
>
> Extended aeration systems like 'activated sludge process' and 'oxidation ditch' are the improved aerobic biological treatment systems occupying less land area since the detention time/capacity would be only about 1-2 days. These units require secondary settling tank and sludge re-circulation arrangements. Extended aeration systems are proved to be efficient. The operational and maintenance post is comparatively high for smaller installations, but economical for treatment capacity of 150 M^3 and above per day."

11. A study of the conditions prevailing at Jajmau, Kanpur was made by the Sub-Committee on Effluent Disposal constituted by the Development Council for Leather and Leather Goods Industries along with the various tanneries situated in some other parts of India and in its report submitted in April, 1984, the Sub-Committee has observed in the case of the tanneries at Jajmau, Kanpur thus:

> 'In the case of Jajmau, Kanpur, the committee visited few tanneries where the effort has been made to have primary treatment of the effluent before it is discharged to the common drain/the river

Ganges. There are 60 tanneries in Jajmau which will be covered under joint effluent disposal. The total production is to the tune of 12000 hides with a total discharge of 5 million litres per day. The State Government has taken appropriate steps in preparation of the feasibility report under the guidance of U.P. Pollution Control Board. This proposal was also supported by Central Pollution Board, Delhi by sharing the total fee of Rs. 80,000 to be paid to the Public Health Engineering Consultancy, Bombay which has prepared the report with the help of IIT, Bombay. The report suggests that each tannery should make arrangement of their effluent and then it will be discharged into common treatment plant."

12. There is a reference to the Jajmau tanneries in 'an Action Plan for Prevention of Pollution of the Ganga' prepared by the Department of Environment, Government of India in the year 1985, which is as under:

"1.1 The Ganga drains eight States Himachal Pradesh, Punjab, Haryana, Uttar Pradesh, Rajasthan, Madhya Pradesh, Bihar, West Bengal and the Union Territory of Delhi. It is also the most important river of India and has served as the cradle of Indian Civilization. Several major pilgrim centres have existed on its banks for centuries and millions of people come to bathe in the river during religious festivals, especially the Kumbhs of Haridwar and Allahabad. Many towns on the Ganga, e.g., Kanpur, Allahabad, Patna and Calcutta have very large populations and the river also serves as the source of water supply for these towns. The Ganga is, however, being grossly polluted especially near the towns situated on its banks. Urgent steps need to be taken to prevent this pollution and restore the purity of river water.

2.0. Sources of Pollution

2.1 The main sources of pollution of the Ganga are the following:

Urban liquid waste (Sewage, storm drainage mixed with sewage, human, cattle and kitchen wastes carried by drains etc.)

Industrial liquid waste

Surface run-off of cultivated land where cultivators use chemical fertilisers, pesticides, insecticides and such manures the mixing of which may make the river water unsafe for drinking and bathing

Surface run-off from areas on which urban solid wastes are dumped

Surface run-off from areas on which industrial solid wastes are dumped

......

4.4.12 Effluent from industries:

Under the laws of the land the responsibility for treatment of the industrial effluents is that of the industry. While the concept of 'Strict Liability' should be adhered to in some cases, circumstances may require that plans for sewerage and treatment systems should consider industrial effluents as well. Clusters of small industries located in a contiguous area near the river bank and causing direct pollution to the river *such as the tanneries in Jajmau in Kanpur* is a case in point. In some cases, wastewaters from some industrial units may have already been connected to the city sewer and, therefore, merit treatment along with the sewage in the sewage treatment plant. It may also be necessary in some crowded areas to accept wastewaters of industries in a city sewer to be fed to the treatment plant, provided in the industrial waste is free from heavy metals, toxic chemicals and is not abnormally acidic or alkaline.

In such circumstances, scheme proposals

have to carefully examine the case of intergrating or segregating industrial wastes for purposes of conveyance and treatment as also the possibilities for appointment of capital and operating costs between the city authorities and the industries concerned." (emphasis added)

13. Appearing on behalf of the Department of Environment, Government of India, Shri B. Dutta, the learned Ist Additional Solicitor General of India placed before us a memorandum explaining situation at the existing Jajmau area of Kanpur. It reads thus :

> "Status regarding construction of treatment facilities for treatment of wastes from Tanneries in Jajmau area of Kanpur.
>
> 1. About 70 small, medium and large tanneries are located in Jajmau area of Kanpur. On an average they generate 4.5 MLD of waste water.
>
> 2. Under the existing laws, tanneries like other industries are expected to provide treatment of their effluents to different standards depending on whether these are discharged into stream or land. It is the responsibility of the industry concerned to ensure that the quality of the wastewater conforms to the standards laid down.
>
> 3. From time to time, tanneries of Kanpur have represented that due to lack of physical facilities, technical knowhow and funds, it has not been possible to install adequate treatment facilities.
>
> 4. Jajmau is an environmentally degraded area of Kanpur. The location of numerous tanneries in the area is a major cause of the degradation. Civic facilities for water supply, sanitation, solid waste removal etc. are also highly inadequate. Because the area abuts the Ganga river, its pollution affects the river quality as well. Accordingly, under the Ganga Action Plan an integrated sanitation project is being taken up for the Jajmau area. Some aspects of the Plan relate to tannery wastes as follows :
>
> (i) The medium and large units will have to up pretreatment facilities to ensure that the standard of sewage discharged into the municipal sewer also conform to the standards laid down. Scientific Institutions such as Central Leather Research Institute are looking into the possibilities of pretreatment including recovery of materials such as chromium. The setting up of pre-treatment facility in the respective units will be the responsibility of the individual units concerned. The Ganga Project Directorate as part of the Ganga Action Plan, will play a facilitative role to demonstrate application of modern technologies for cost effective pre-treatment which the small tanners can afford.
>
> (ii) Since the wastes will be ultimately discharged into the river, the waste will have to further conform to the standards laid down for discharge into the stream. For this purpose, it will be necessary to treat the waste further and as part of the Ganga Action Plan a treatment plant will be constructed for this purpose utilising some advanced processes. It is also proposed to combine the domestic waste with the industrial waste conveyed through the industrial sewer which will then be treated in a treatment plant.
>
> (iii) It is estimated that cost of this proposed sewage treatment facility which will treat the waste from the domestic sources and the pretreated wastes from tanneries will be about Rs.2.5 crores. It will have a capacity of 25 MLD and the first demonstration module of about 5 MLD is expected to be installed in early 1988-89. Necessary work for designing

> of the plant has already been initiated and the infrastructure facilities such as availability of land, soil testing etc. have also been ensured. Tender specifications are being provided and it is expected that the tenders will be floated sometime in October 87. It is expected that in the combined treatment facility of 25 MLD, about 20 MLD will be from the domestic sources and 5 MLD will be from the tanneries after pretreatment in the region."

14. In the counter-affidavit filed on behalf of the Hindustan Chambers of Commerce, of which 43 respondents are members it is admitted that the tanneries discharge their trade effluents into the sewage nullah which leads to the municipal sewage plant before they are thrown into the river Ganga. It is not disputed by any of the respondents that the water in the river Ganga is being polluted grossly by the effluent discharged by the tanneries. We are informed that six of the tanneries have already set up the primary treatment plants for carrying out the pre-treatment of the effluent before it is discharged into the Municipal Sewerage which ultimately leads to the river Ganga. About 14 of the tanneries are stated to be engaged in the construction of the primary treatment plants. It is pleaded on behalf of the rest of the tanneries who are the members of the Hindustan Chambers of Commerce and three other tanneries represented by Shri Mukul Mudgal that if some time is given to them to establish the pre-treatment plants they would do so. It is, however, submitted by all of them that it would not be possible for them to have the secondary system for treating wastewater as that would involve enormous expenditure which the tanneries themselves would not be able to meet. It is true that it may not be possible for the tanneries to establish immediately the secondary system plant in view of the large expenditure involved but having regard to the adverse effect the effluents are having on the river water, the tanneries at Jajmau, Kanpur should, at least set up of the primary treatment plants and that is the minimum which the tanneries should do in the circumstances of the case. In the counter-affidavit filed on behalf of the Hindustan Chamber of Commerce it is seen that the cost of pretreatment plant for a 'A' class tannery is Rs. 3,68,000/-, the cost of the plant for a 'B' class tannery is Rs. 2,30,000/- and the cost of the plant for 'C' class tannery is Rs. 50,000/-. This cost does not appear to be excessive. The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure. Moreover, the tanneries involved in this cases are not taken by surprise. For several years they are being asked to take necessary steps to prevent the flow of untreated wastewater from their factories into the river. Some of them have already complied with the demand. It should be remembered that the effluent discharged from a tannery is ten times noxious when compared with the domestic sewage water which flows into the river from any urban area on its banks. We feel that the tanneries at Jajmau, Kanpur cannot be allowed to continue to carry on the industrial activity unless they take steps to establish primary treatment plants. In cases of this nature this Court may issue appropriate directions if it finding that the public nuisance or other wrongful act affecting or likely to affect the public is being committed and the statutory authorities who are charged with the duty to prevent it are not taking adequate steps to rectify the grievance. For every breach of a right there should be a remedy. It is unfortunate that a number of tanneries at Jajmau even though they are aware of these proceedings have not cared even to enter appearances in this Court to express their willingness to take appropriate steps to establish the pretreatment plants. So far as they are concerned an order directing them to stop working their tanneries should be passed. We accordingly direct M/s. Delight Tannery (respondent 14). M/s. Hindustan Tannery (respondent 15), M/s. Primer Allarmin Tannery (respondent 33), M/s. Mahaboob Tannery (respondent 37), M/s. Popular Tannery (respondent 38), M/s. Standard Tannery (respondent 39), M/s. Vikash Tannery (respondent 40), M/s. New Golden Tannery (respondent 41), M/s. D.D. Tannery (respondent 42), M/s. Himalaya Tannery (respondent 44), M/s. Commercial Industry (respondent 45), M/s. Madina Tannery (respondent 46), M/s Kanpur Tannery (respondent 48), M/s. New Jab Tannery (respondent 49), M/s. Famous Tannery (respondent 50), M/s. Glaxy Tannery (respondent 53), M/s. Bengal Tannery (respondent 56), M/s. Chhangal Tannery (respondent 59), M/s. Nadari Tannery (respondent 63), M/s. Jajmau Tanners (respondent 65). M/s. International Tanning Industry (respondent 66), M/s Poorwanchal Tanning Industry (respondent 70), M/s. Navratan Tanning (respondent 71), M/s. Haroou Tannery (respondent 73), M/s. Himalaya Tanners (respondent 76), M/s. R.A. Traders (respondent 79), M/s. Alam Tannery (respondent 83), M/s. G.T. Tannery (respondent 84) and M/s. Awadh Tannery (respondent 86) to stop the running of their tanneries and also not to let out trade effluents from their tanneries either directly or indirectly into the river Ganga without subjecting the trade effluents to a pretreatment process by setting up primary treatment plants as approved by the State Board (respondent 8) with effect from 1.10.1987.

15. M/s. Indian Tanning Industry (respondent 30), the U.P. Tannery (Respondent 19), M/s. Zaz Tannery (respondent 28), M/s. Super Tannery India Ltd. (respondent 21), M/s. Shewan Tannery (respondent 20), M/s. Pioneer Tannery (respondent 23), and M/s. M.K.J. Corporation (respondent 89) who have already put up the primary treatment plants may continue to carry on production in their factories subject to the condition that they should continue to keep the primary treatment plants established by them in sound working order.

16. Shri S.K. Dholakia, learned counsel for the other tanneries who are members of the Hindustan Chambers of Commerce and the other tanneries who have entered appearance through Shri Mukul Mudgal submits that they will establish primary treatment plants within six months and he further submits that in the event of their not completing the construction of the primary treatment plants as approved by the State Board (respondent 8) and bringing them into operation within the period of six months the said tanneries will stop carrying on their business. We record the statement made by the learned counsel and grant them time till 31.3.1988 to set up the primary treatment plants. If any of these tanneries does not set up a primary treatment plant within 31.3.1988 it is directed to stop its business with effect from 1.4.1988.

17. We issue a direction to the Central Government, the Uttar Pradesh Board, established under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the District Magistrate, Kanpur to enforce our order faithfully. Copies of this order shall be sent to them for information.

18. The case is adjourned to 27th October, 1987 to consider the case against the municipal bodies in the State of Uttar Pradesh having jurisdiction over the areas through which the river Ganga is passing.

Singh J.— I respectfully agree with every word what my learned brother Venkataramiah, J. has stated in the proposed order and the directions issued by that order. However, I wish to add few words.

20. The river Ganga is one of the greatest rivers of the world, although its entire course is only 1560 miles from its source in Himalaya to the sea. There are many rivers larger in shape and longer in size but no river in the world has been so great as the Ganga. It is great because to millions of people since centuries it is the most sacred river. It is called "Sursari" river of the Gods, `Patitpawani' purifier of all sins and `Ganga Ma' Mother Ganges. To millions of Hindus, it is the most sacred, most venerated river on earth. According the Hindu belief and mythology to bathe in it, is to wash away guilt, to drink the water, having bathed in it, and to carry it away in containers for those who may have not had the good fortune to make the pilgrimage, to it, is meritorious. To be cremated on its banks, or to die there, and to have one's ashes cast on its waters, is the wish of every Hindu. Many saints and sages have persued their quest for knowledge and enlightenment on the banks of the river Ganga. Its water has not only purified the body and soul of the millions but it has given fertile land to the country in Uttar Pradesh and Bihar. Ganga has been used as means of water transport for trade and commerce. The Indian Civilization of the Northern India thrived in the plains of Ganga and most of the important towns and places of pilgrimage are situated on its banks. The river Ganga has been part of Hindu Civilization. Pt. Jawahar Lal Nehru who did not consider himself a devout Hindu gave expression to his feelings for the Ganga that is to be found in his Will and Testament, a short extract from which is as under':

> "My desire to have a handful of my ashes thrown into the Ganga at Allahabad has no religious significance, so far as I am concerned. I have no religious sentiment in the matter. I have been attached to the Ganga and the Jamuna rivers in Allahabad ever since my childhood and, as I have grown older, this attachment has also grown. I have watched their varying moods as the seasons changed, and have often thought of the history and myth and tradition and song and story that have become attached to them through the long ages and become part of their flowing waters. The Ganga, especially, as the river of India, beloved of her people, round which are intertwined her racial memories, her hopes and fears, her songs of triumph, her victories and her defeats. She has been a symbol of India's age-long culture and civilization, ever-changing, ever-flowing, and yet ever the same Ganga. She reminds me of the snow-covered peaks and the deep valleys of the Himalayas, which I have loved so much, and of the rich and vast plains below, where my life and work have been cast."

21. The river Ganga is the life line of millions of people of India, Indian culture and civilization has grown around it. This great river drains of eight States of India, Himachal Pradesh, Punjab, Haryana, Uttar Pradesh, Rajasthan, Madhya Pradesh, Bihar and West Bengal. The Ganga has always been an integral part of the nation's history, culture and environment. It has been the source of sustenance for the millions of people whom have lived on its banks from time immemorial.

22. Millions of our people bathe in the

Ganga drink its water under an abiding faith and belief to purify themselves and to achieve moksha release from the cycle of birth and death. It is tragic that the Ganga, which has since time immemorial, purified the people is being polluted by man in numerous ways, by dumping of garbage, throwing carcass of dead animals and discharge of effluents. Scientific investigations and survey reports have shown that the Ganga which serves one-third of the India's population is polluted by the discharge of municipal sewage and the industrial effluents in the river. The pollution of the river Ganga is affecting the life, health, and ecology of the Indo-Gangetic Plain. The Government as well as Parliament both have taken a number of steps to control the water pollution, but nothing substantial has been achieved. I need not refer to those steps as my learned brother has referred to them in detail. No law or authority can succeed in removing the pollution unless the people cooperate. To my mind, it is the sacred duty of all those who reside or carry on business around the river Ganga to ensure the purity of Ganga. Tanneries at Jajmau area near Kanpur have been polluting the Ganga in a big way. This Court issued notices to them but inspite of notice many industrialists have not bothered either to respond to the notice or to take elementary steps for the treatment of industrial effluents before discharging the same into the river. We are therefore issuing the directions for the closure of those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people.

SCALE (PIL) 1981-97 1597

M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S.C. AGRAWAL, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — GANGA — Ganga Pollution matters from State of West Bengal — Court passes further orders.

1. Pursuant to this Court's order dated August 9, 1992, the West Bengal Pollution Control Board has submitted its report wherein it has divided the industries into various groups. Howrah station comes in Group 'D', Part I of Annexure 'A' to the said report. This Court on February 19, 1993 passed the following order in respect of above group of industries.

> "As regards the industries mentioned in Group `D' Part I of Annexure `A' it has been reported that in spite of notice they have not installed any treatment facility nor have they taken any positive step for construction or implementation of effluent treatment plant. We direct these industries to set up right type of effluent treatment plants by May 15, 1993 peremptorily. Such effluent treatment plants, if are not set up by that date by these industries, they shall be closed forthwith. The State of West Bengal shall ensure compliance with these directions."

2. In its affidavit dated July 9, 1993 filed by Mr. Biswajit Mukherjee, Law Officer,

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Order dated July 23, 1993 in W.P. (C) No. 3727/85. [1993(3) SCALE 921]

West Bengal Pollution Control Board, it has been stated that the above quoted order of this Court has not been complied with by the Howrah railway station. It is further stated that in spite of the closure notice served on the Board, neither effluent treatment plant has been installed nor the termination of effluent into the Ganges has been stopped.

3. We issue contempt notice to Mr. Ashok Bhatnagar, Mr. M.L Gupta and Mr. B Maitro, General Manager, Eastern Railways, Chief Engineers, Eastern Railway and Station Superintendent of the Howrah Railway Station respectively directing them to show cause as to why they be not held guilty for the contempt of this Court. Contempt notice to be returnable on 15th October, 1993.

4. Apart from Howrah Railway Station, eight other industries in the above group are also similarly placed. These industries have also flouted the above quoted orders of this Court. We issue contempt notice to the Managing Directors/Managers/Proprietors/ Managing Partners or any of the partners of these industries returnable on 15th October, 1993. We further direct the respective Deputy Commissioner and the Superintendent of Police where the above industries are situated to ensure the compliance of the order of this Court. Copy of the order of this court be sent to the Deputy Commissioner and the Superintendent of Police concerned. These authorities shall send the compliance report to this Court after getting the industries closed within 4 weeks from today. The notices be sent either to the industries concerned directly or through the learned counsel appearing for the said industries.

5. In case any of the industries which have been closed under orders of this court, have meanwhile set up the effluent treatment plant it would be open to the Industry concerned to satisfy the Board in that respect. The Board shall immediately bring the fact to the notice of this court for appropriate orders.

6. It is stated on behalf of some of the industries that they are not terminating the effluent in the river Ganges. It would be open to the said industries to approach the Board and satisfy the Board in that respect.

7. In the affidavit filed by the Bengal State Board dated July 9, 1993, a list of industries which have met the standards as prescribed by the State Board has been given in Group I. No further action as at present need be taken against these industries.

8. The list of industries in Group II have constructed effluent treatment plants and are in the process of stabilization. But they have yet to meet the standards as fixed by the State Board. We grant two months time to these industries to reach the necessary standards as fixed by the Board.

9. The industries listed in Group III and IV are in the process of setting up the right type of effluent treatment plant. We give them three months time peremptorily from today to complete the setting up of the plants. The Plant must conform to the standards fixed by the Board.

10. The Group V industries have already been ordered to be closed.

11. Group VI contains the additional list of industries who have not installed the right type of effluent treatment plant. In spite of opportunity given by the Board, the effluent treatment plants have not been installed. We direct the closure of these 25 industries with immediate effect. We further direct the Deputy Commissioner and the Superintendent of Police of the area concerned to ensure that our orders are complied forthwith. These authorities shall send a report within one month from today.

12. Notwithstanding the order of closure if any of these industries are in a position to show that they have started the effluent treatment plant or they are not producing any effluent, they may approach the Board within 2 weeks from today and satisfy the Board in that respect. We direct the West Bengal Pollution Control Board to submit a comprehensive compliance report keeping in view the order which we have made today in respect of various industries within 4 weeks from today.

13. If the Board is satisfied that any of the industries is to be re-opened because the said industry has complied with the standards of the Board, then the Board may approach this Court immediately to obtain appropriate orders.

14. List the matter on 13th August, 1993 at 1.45 p.m.

SCALE (PIL) 1981-97 1599

RURAL LITIGATION AND ENTITLEMENT KENDRA, DEHRADUN & ORS. *Petitioners*

VS

STATE OF U.P. & ORS. *Respondents*

CORAM: P.N. BHAGWATI, AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — LIMESTONE QUARRY — Environmental and ecological balance — Maintenance of — Quarrying and excavation of lime stone deposits for industrial purposes — Giving the directions, Held,

A. There can be no gainsaying that lime stone quarrying and excavation of the lime stone deposits are bound to affect the perennial water springs. This environmental disturbance has, however, to be weighed in the balance against the need of lime stone quarrying for industrial purposes in the country. The Court gave the following directions: (1) appointment of Bandopadhya Committee; (2) Quarries already closed should not be allowed to be operated. If any stay orders had been obtained such stay orders will stand dissolved; subsisting leases shall stand terminated without any liability against the State; (3) It is true that the lessees of lime stone quarries which had been directed to be closed down permanently would be thrown out of business but it is the price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance. To mitigate hardship those thrown out of business should be given priority in granting leases elsewhere; (4) Workers displaced by this order should be provided employment in afforestation and soil conservation programme to be taken up in the area.

1. This case has been argued at great length before us not only because a large number of lessees of lime stone quarries are involved and each of them has pains-takingly and exhaustively canvassed his factual as well as legal points of view but also because this is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also in their implications to the welfare of the generality of people living in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger interest

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Order dated March 12, 1985 in W.P. No. 8209 of 1982 and W.P. No. 8821 of 1983 (D.N. Pandey v U.O.I.). [1985(1) SCALE 408] of the country. But since having regard to the voluminous material placed before us and the momentous issues raised for decision, it is not possible for us to prepare a full and detailed judgment immediately and at the same time, on account of interim order made by us, mining operations carried out through blasting have been stopped and the ends of justice require that the lessees of lime stone quarries should know, without any unnecessary delay, as to where they stand in regard to their lime stone quarries, we propose to pass our order on the writ petitions. The reasons for the order will be set out in the judgment to follow later.

2. We had by an Order dated 11th August 1983 appointed a Committee consisting of Sh. D.N. Bhargav, Controller General, Indian Bureau of Mines, Nagpur, Shri M.S. Kahlon, Director General of Mines Safety and Col. P. Mishra, Head of the Indian Photo Interpretation Institute (National Remote Sensing Agency) for the purpose of inspecting the lime stone quarries mentioned in the writ petition as also in the list submitted by the Government of Uttar Pradesh. This Committee which we shall hereinafter for the sake of convenience refer to as the Bhargav Committee, submitted three reports after inspecting most of the lime stone quarries and it divided the lime stone quarries into three groups. The lime stone quarries comprised in category A were those where in the opinion of the Bhargav Committee the adverse impact of the mining operations was relatively less pronounced; category B comprised those lime stone quarries where in the opinion of the Bhargav Committee the adverse impact of the mining operations was relatively more pronounced and category C covered those lime stone quarries which had been directed to be closed down by the Bhargav Committee under the orders made by us on account of deficiencies regarding safety and hazards of more serious nature.

3. It seems that the Government of India also appointed a Working Group on Mining of Lime Stone Quarries in Dehradun-Mussoorie area, some time in 1983. The Working Group was also headed by the same Sh. D.N. Bhargav who was a member of the Bhargav Committee appointed by us. There were five other members of the Working Group along with Shri D.N. Bhargav and one of them was Dr. S. Mudgal who was at the relevant time Director in the Department of Environment, Government of India and who placed the report of the Working Group before the Court along with his affidavit. The Working Group in its report submitted in September 1983 made a review of lime stone quarry leases for continuance or discontinuance of mining operations and after a detailed consideration of various aspects recommended that the lime stone quarries should be divided into two categories, namely category 1 and category 2; category 1 comprising lime stone quarries considered suitable for continuance of mining operations and category 2 comprising lime stone quarries which were considered unsuitable for further mining.

4. It is interesting to note that the lime stone quarries comprised in category A of the Bhargav Committee Report were the same lime stone quarries which were classified in category 1 by the Working Group and the lime stone quarries in categories B and C of the Bhargav Committee Report were classified in category 2 of the Report of the Working Group. It will thus be seen that both the Bhargav Committee and the Working Group were unanimous in their view that the lime stone quarries classified in category A by the Bhargav Committee Report and category 1 by the Working Group were suitable for continuance of mining operations. So far as the lime stone quarries in category C of the Bhargav Committee Report are concerned, they were regarded by both the Bhargav

Committee and the Working Group as unsuitable for continuance of mining operations and both were of the view that they should be closed down. The only difference between the Bhargav Committee and the Working Group was in regard to lime stone quarries classified in category B. The Bhargav Committee Report took the view that these lime stone quarries need not be closed down, but it did observe that the adverse impact of mining operations in these lime stone quarries were more pronounced, while the Working Group definitely took the view that these lime stone quarries were not suitable for further mining.

5. While making this Order we are not going into the various remifications of the arguments advanced before us but we may observe straight away that we do not propose to rely on the Report of Prof. K.S. Valdia, who was one of the members of the Expert Committee appointed by us by our Order dated 2nd September 1983, as modified by the Order dated 25th October 1983. This Committee consisted of Prof. K.S. Valdia, Shri Hukum Singh and Shri D.N. Kaul and it was appointed to enquire and investigate into the question of disturbance of ecology and pollution and affectation of air, water and environment by reason of quarrying operations or stone crushers or lime stone kilns. Shri D.N. Kaul and Shri Hukum Singh submitted a joint report in regard to the various aspects while Prof. K.S. Valdia submitted a separate report. Prof. K.S. Valdia's Report was confined largely to the geological aspect and in the report he placed considerable reliance on the Main Boundary Thrust (hereinafter shortly referred to as M.B.T.) and he took the view that lime stone quarries which were dangerously close to the M.B.T. should be closed down, because they were in this sensitive and vulnerable belt. We shall examine this Report in detail when we give our reasons but we may straight away point out that we do not think it safe to direct continuance or discontinuance of mining operations in lime stone quarries on the basis of the M.B.T. We are therefore not basing our conclusions on the Report of Prof. K.S. Valdia but while doing so we may add that we do not for a moment wish to express any doubt on the correctness of his Report.

6. We shall also examine in detail the question as to whether lime stone deposits act as aquifers or not. But there can be no gain saying that lime stone quarrying and excavation of the lime stone deposits do seem to effect the perennial water springs. This environmental disturbance has however to be weighed in the balance against the need of lime stone quarrying for industrial purposes in the country and we have taken this aspect into account while making this order.

7. We are clearly of the view that so far as the lime stone quarries classified in category C in the Bhargav Committee Report are concerned, which have already been closed down under the directions of the Bhargav Committee, should not allowed to be operated. If the lessees of these lime stone quarries have obtained any stay order from any court permitting them to continue the mining operations, such stay order will stand dissolved and if there are any subsisting leases in respect of any of these lime stone quarries they shall stand terminated without any liability against the State of Uttar Pradesh. If there are any suits or writ petitions for continuance of expired or unexpired leases in respect of any of these lime stone quarries pending, they will stand dismissed.

8. We would also give the same direction in regard to the lime stone quarries in the Sahasradhara Block even though they are placed in category B by the Bhargav Committee. So far as these lime stone quarries in Sahasradhara Block are concerned, we agree with the Report made by the Working Group and we direct that these lime stone quarries should not be allowed to be operated and should be closed down forthwith. We would also direct, agreeing with the Report made by the Working Group that the lime stone quarries placed in category 2 by the Working Group other than those which are placed in categories B and C by the Bhargav Committee should also not be allowed to be operated and should be closed down save and except for the lime stone quarries covered by mining leases Nos. 31, 36 and 37 for which we would give the same direction as we are giving in the succeeding paragraphs in regard to the lime stone quarries classified as category B in the Bhargav Committee Report. If there are any subsisting leases in respect of any of these lime stone quarries they will forthwith come to an end and if any suits or writ petitions for continuance of expired or unexpired leases in respect of any of these lime stone quarries are pending, they too will stand dismissed.

9. So far as the lime stone quarries classified as category A in the Bhargav Committee Report and for category 1 in the Working Group Report are concerned, we would divide them into two classes, one class consisting of those lime stone quarries which are within the city limits of Mussoorie and the other consisting of those which are outside the city limits. We take the view that the lime stone quarries falling within category A of the Bhargav Committee Report and for category 1 of the Working Group Report and falling outside the city limits of Mussoorie, should be allowed to be operated subject of course to the observance of the requirements of the Mines Act 1952, the Metalliferous Mines Regulations, 1961 and other relevant statutes, rules and regulations. Of course when we say this, we must make it clear that we are not holding that if the leases in respect of these lime stone quarries have expired and suits or writ petitions for renewal of the leases are pending in the courts, such leases should be automatically renewed. It will be for the appropriate courts to decide whether such leases should be renewed or not having regard to the law and facts of each case. So far as the lime stone quarries classified in category A in the Bhargav Committee Report and or category 1 in the Working Group Report and falling within the city limits of Mussoorie are concerned, we would give the same direction which we are giving in the next succeeding paragraph in regard to the lime stone quarries classified as category B in the Bhargav Committee Report.

10. That takes us to the lime stone quarries classified as category B in the Bhargav Committee Report and category 2 in the Working Group Report. We do not propose to clear these lime stone quarries for continuance of mining operations nor to close them down permanently without further inquiry. We accordingly appoint a high powered Committee consisting of Mr. D. Bandyopadhyay, Secretary, Ministry for Rural Development as Chairman and Shri H.S. Ahuja, Director-General, Mines Safety, Dhanbad, Bihar, Shri D.N. Bhargav, Controller General, India Bureau of Mines, New Secretariate Building, Nagpur and two experts to be nominated by the Department of Environment, Government of India within four weeks from the date of this Order. The lessees of the lime stone quarries classified as category A in Bhargav Committee Report and or Category I and the Working Group Report and falling within the city limits of Mussoorie as also the lessees of the lime stone quarries classified as category B in the Bhargav Committee Report will be at liberty to submit a full and detailed scheme for mining their lime stone quarries to this Committee (hereinafter called the Bandyopadhyay Committee) and if any such scheme or schemes are submitted, the Bandyopadhyay Committee will proceed to examine the same without any unnecessary delay and submit a report to this Court whether in its opinion the particular lime stone quarry can be allowed to be operated in accordance with the scheme and if so, subject to what conditions and if it cannot be allowed to be operated, the reasons for taking that view. The Bandyopadhyay Committee in making its report will take into account the various aspects which we had directed, the Bhargav Committee and the Kaul Committee to consider while making their respective reports including the circumstances that the particular lime stone quarry may or may not be within the city limits of Mussoorie and also give an opportunity to the concerned lessee to be heard, even though it be briefly. The Bandyopadhyay Committee will also consider while making its report whether any violations of the provisions of the Mines Act 1952, the Metalliferous Mines Regulations, 1961 and other relevant statutes, rules and regulations were committed by the lessee submitting the scheme or schemes and if so, what were the nature, extent and frequency of such violations and their possible hazards. The Bandyopadhyay Committee will also insist on a broad plan of exploitation coupled with detailed mining management plans to be submitted along with the scheme or schemes and take care to ensure that the lime stone deposits are exploited in a scientific and systematic manner and if necessary, even by two or more lessees coming together and combining the areas of the lime stone quarries to be exploited by them. It should also be the concern of the Bandyopadhyay Committee while considering the scheme or schemes submitted to it and making its report, to ensure that the lime stone, on exploitation, is specifically utilised only in special industries having regard to its quality and is not wasted by being utilised in industries for which high grade lime stone is not required. The necessary funds for the purpose of meeting the expenses which may have to be incurred by the members of the Bandyopadhyay Committee will be provided by the State of Uttar Pradesh including their travelling and other allowances appropriate to their office. The State of Uttar Pradesh will also provide to the members of the Bandyopadhyay Committee necessary transport and other facilities for the purpose of enabling them to discharge their functions under this Order. If any notices are to be served by the Bandyopadhyay Committee the District Administration of Dehradun will provide the necessary assistance for serving of such notices on the lessees or other interested parties. The Bandyopadhyay Committee will also be entitled before expressing its opinion on the scheme or schemes submitted to it, to hear the petitioner, the interventionists in this case and such other persons or organisations as may be interested in maintenance and preservation of healthy environment and ecological balance. The Indian Bureau of Mines will provide secretarial facilities to the Bandyopadhyay Committee. The Report submitted by the Bandyopadhyay Committee in each case will be considered by the Court and a decision will then be taken whether the lime stone quarry or quarries in respect of which the report has been made should be allowed to be operated or not. But until then these lime stone quarries will not be allowed to be operated or worked and the District Authorities of Dehradun will take prompt and active steps for the purpose of ensuring that these lime stone quarries are not operated or worked and no mining activity is carried on even clandestinely. This order made by us will supersede any stay or any other interim order obtained by the lessee of any of those lime stone quarries permitting him to carry on mining operations and notwithstanding such stay order or other interim order or subsisting lease, the lessees shall not be entitled to carry on any mining activity whatsoever in any of these lime stone quarries and shall desist from doing so. The lessees of these limestone quarries will also not in the meanwhile be permitted to rectify the defects pointed out in the orders issued by the District Mining Authorities but they may include the proposal for such rectification in the scheme or schemes which they may submit to the Bandyopadhyay Committee. We may however make it clear that non rectification of the defects pursuant to the notices issued by the District Mining Authorities shall not be taken advantage of by the State of Uttar Pradesh as a ground for terminating the lease or leases.

11. We may point out that so far as the lime stone quarries at Sl. Nos. 17 to 20 in category B in the Bhargav Committee Report are concerned we are informed that they have already been closed down and no further direction therefore is necessary to be given in regard to them save and except in regard to removal of the lime stone, dolomite and marble chips which may have already been mined and which may be lying at the site for which we are giving separate directions in one of the succeeding paragraphs in this Order.

12. The consequence of this Order made by us would be that the lessees of lime stone quarries which have been directed to be closed down permanently under this Order or which may be directed to be closed down permanently after consideration of the report of the Bandyopadhyay Committee, would be thrown out of business in which they have invested large sums of money and expanded considerable time and effort. This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment. However, in order to mitigate their hardship, we would direct the Government of India and the State of Uttar Pradesh that whenever any other area in the State of Uttar Pradesh is thrown open for grant of lime stone or dolomite quarrying, the lessees who are displaced as a result of this order shall be afforded priority in grant of lease of such area and intimation that such area is available for grant of lease shall be given to the lessees who are displaced so that they can apply for grant of lease of such area and on the basis of such application, priority may be given to them subject, of course, to their otherwise being found fit and eligible. We have no doubt that while throwing open new areas for grant of lease for lime stone or dolomite quarrying, the Government of India and the State of Uttar Pradesh will take into account the considerations to which we have adverted in this order.

13. We are conscious that as a result of this Order made by us, the workmen employed in the lime stone quarries which have been directed to be closed down permanently under this Order or which may be directed to be closed down permanently after consideration of the report of the Bandopadhyay Committee, will be thrown out of employment and even those workmen who are employed in the lime stone quarries which have been directed to be closed down temporarily pending submission of scheme or schemes by the lessees and consideration of such scheme or schemes by the Bandyopadhyay Committee, will be without work for the time being. But the lime stone quarries which have been or which may be directed to be closed down permanently will have to be reclaimed and afforestation and soil conservation programme will have to be taken up in respect of such lime stone quarries and we would therefore direct that immediate steps shall be taken for reclamation of the areas forming part of such lime stone quarries with the help of the already available Eco-

Task Force of the Department of Environment, Government of India and the workmen who are thrown out of employment in consequence of this Order shall, as far as practicable and in the shortest possible time, be provided employment in the afforestation and soil conservation programme to be taken up in this area.

14. There are several applications before us for removal of lime stone, dolomite and marble chips mined from the quarries and lying at the site and these applications also are being disposed of by this Order. So far as lime stone quarries classified as category A in the Bhargav Committee Report and or category 1 in the Working Group Report and falling outside the city limits of Mussoorie are concerned, we have permitted the lessees of these lime stone quarries to carry on mining operations and hence they must be allowed to remove whatever minerals are lying at the site of these lime stone quarries without any restriction whatsoever, save and except those prescribed by any statutes, rules or regulations and subject to payment of royalty. So far as the other lime stone quarries are concerned, whether comprised in category A of Bhargav Committee Report or category 1 of the Working Group Report and falling within the city limits of Mussoorie or falling within category 2 of the Working Group Report, there is a serious dispute between the lessees of these lime stone quarries on the one hand and the petitioners and the State of Uttar Pradesh on the other as to what is the exact quantity of minerals mined by the lessees and lying at the site. We had made an order on 15th December 1983 requiring the District Magistrate Dehradun to depute some officer either of his Department or of the Mining Department to visit the site of these lime stone quarries for the purpose of assessing the exact quantity of lime stone lying there and to report in this connection. The District Magistrate, Dehradun deputed the Sub-Divisional Magistrates of Mussoorie and Dehradun and Tehsildar (Quarry) Dehradun to inspect the 20 lime stone quarries comprised in category C of the Bhargav Committee Report which had been ordered to be closed down under the directions of the Bhargav Committee and an affidavit was filed on behalf of the District Magistrate Dehradun, by Kedar Singh Arya, Tehsildar (Quarry) Dehradun, annexing a chart showing the details of the minerals mined by the lessees of those lime stone quarries and lying at the site. Thereafter, when again the case came up for hearing before us on 5th January 1984, we, in order to allay any apprehensions on the part of the lessees that the District Authorities had not done their job correctly in assessing the quantity of minerals lying at the site, appointed a Committee of two officers, namely, Shri D. Bandophadyay and Director of Geology (Mines) Lucknow for the purpose of visiting the lime stone quarries which had been directed to the closed down and to assess the quantity of minerals lying on the site of those lime stone quarries after giving notice to the concerned lessees as also to the District Magistrate Dehradun and the representatives of the petitioners. Pursuant to this order made by us, Shri D. Bandopadhyay and the Director of Geology (Mines) Lucknow visited the lime stone quarries comprised in category C of the Bhargav Committee Report and directed to be closed down and assessed the quantity of minerals lying at the site of each of these lime stone quarries. The quantity of minerals lying at the site, according to Shri D. Bandophadyay and the Director of Geology (Mines), was very much less than what was claimed by the lessees and it does appear that though these lime stone quarries were directed to be closed down, illegal mining was being carried on clandestinely, because otherwise it is difficult to understand how the figures of the quantity of minerals lying at the site as assessed in December 1983 by the District Authorities became inflated when Shri D. Bandophadyay and Director of Geology (Mines) made their assessment in January 1984 and thereafter the figures again got inflated if the quantity now claimed by the lessees as lying on the site is correct. We do not, however, propose to go into the question as to what was the precise quantity of minerals mined by the lessees of these lime stone quarries and lying at the site at the time when these lime stone quarries were closed down under the directions of the Bhargav Committee. We would permit the lessees of these lime stone quarries to remove whatever minerals are found lying at the site or its vicinity, provided of course such minerals are covered by their respective leases and/or quarry permits. Such removal will be carried out and completed by the lessees within four weeks from the date of this Order and it shall be done in the presence of an Officer not below the Rank of Deputy Collector to be nominated by the District Magistrate Dehradun, a Gazetted Officer from the Mines Department nominated by the Director of Mines and a public spirit individual in Dehradun, other than Mr. Avdesh Kaushal, to be nominated by Shri D. Bandophadyay. These nominations shall be made within one week from today and they may be changed from time to time depending on the exigencies of the situation. Notice of intended removal of minerals lying at the site shall be given by the lessees to the District Magistrate Dehradun, Director of Mines Dehradun and the person nominated by Shri D. Bandophadyay. No part of the minerals lying at the site shall be removed by the lessees except in the presence of the above mentioned three persons. The lessees will on the expiry of the period of four weeks submit a report to this Court setting out the precise quantities of minerals removed by them from the site pursuant to this Order made by us. The lessees shall not be entitled to remove any minerals after the expiration of the period of four weeks.

15. Before we close we wish to express our sense of appreciation for the very commendable assistance rendered to us by Shri Pramod Dayal, learned advocate appearing on behalf of some of the lessees. He undertook the responsibility of arranging the various affidavits and written submissions in a proper and systematic manner and we must confess that but for the extremely able assistance rendered by him, it would not have been possible for us to complete the hearing of this case satisfactorily and to pass this order within such a short time. We would direct that the Government of India and the State of Uttar Pradesh should each pay a sum of Rs. 5,000/- to Shri Pramod Dayal for the work done by him. We may point out that this payment to Shri Pramod Dayal is not in lieu of costs but is an additional remuneration which we are directing to be paid in recognition of the very valuable assistance rendered by him to the Court.

SCALE (PIL) 1981-97 1606

RURAL LITIGATION AND ENTITLEMENT KENDRA DEHRADUN & ORS. *Petitioners*

VS

STATE OF U.P. & ORS. *Respondents*

CORAM: P.N. BHAGWATI, AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.

Order dated May 13, 1985 in C.M.P. Nos. 16437, 16683, 16757, 17895, 17896, & 18244 of 1985 in W.P. No. 8209 of 1983 and W.P. No. 8821 of 1983 (D.N. Pandey v U.O.I.). [1985(2) SCALE 119]

PUBLIC INTEREST LITIGATION — ENVIRONMENT — LIMESTONE QUARRY — Mining operations — (1985(1) SCALE 408) — Clarifications given.

1. There are several applications which have been filed before us by one party or the other following upon the order made by us in these writ petitions on 12th March, 1985. Some of the applications have already been disposed of by an order made by us on 3rd May 1985 and the remaining applications are being disposed of by this order.

2. We will first take up civil miscellaneous petition No. 17895 of 1985. This application relates to the limestone quarry leased out to one C.G. Gujaral under lease No. 101. It is pointed out by C.G. Gujaral in this application that the limestone quarry forming the subject matter of lease No. 101 is outside the City Board of Mussoorie and is about 18 Kms away from Mussoorie and 35 Kms away from Dehradun and it has not been considered either by the Bhargav Committee or by the Working Group appointed by the Government of India headed by Shri D.N. Bhargav. The result is that it is not possible to say whether this limestone quarry falls within category A, B or C of the Bhargav Committee Report or within category I or II of the Working Group Report. C.G. Gujaral has therefore submitted in this application that he should be permitted to carry on mining operation in this limestone quarry forming the subject matter of lease No. 101. It is true and this is not disputed by the petitioner or by the Union of India or the State of Uttar Pradesh, that the limestone quarry forming the subject matter of lease No. 101 has not received consideration at the hands of the Bhargav Committee or the Working Group and it is therefore not possible to say in which category it falls. But for that reason alone, we cannot permit C.G. Gujaral to carry on mining operations in this limestone quarry. It will have to be ascertained as to in which category this limestone quarry falls in order to decide what treatment it should receive at our hands. We would therefore request the Bhargav Committee consisting of Shri D.N. Bhargav, Shri M.S. Kahlon and Col. P. Misra to visit this lime stone quarry for the purpose of determining in which of the three categories specified in its earlier reports namely A, B or C this lime stone quarry falls so that appropriate directions may be given by us as to whether mining should be allowed to be carried on in this lime stone quarry or not. We would request the Bhargav Committee to submit its report to us within three weeks from the date of receipt of this Order. The District Administration as well as C.G. Gujaral will afford all possible assistance to the Bhargav Committee in inspecting this lime stone quarry for the purpose of making its report. We need not add that while making its report in regard to the category in which this lime stone quarry falls, the Bhargav Committee will take into account the various factors which have already been set out by us in our earlier order dated 11th August, 1983 made by us. But until further no mining operations shall be carried on in this lime stone quarry.

3. That takes us to Civil Miscellaneous Petition No. 16683 of 1985. This application has been made by M/s Anand Bros. and it relates to the lime stone quarry forming the subject matter of lease No. 67. This lime stone quarry falls within category A of the Bhargav Committee Report, but so far as the report of the Working Group is concerned, it has been placed in category II. When we made our order dated 12th March 1985 we were under the impression that "the lime stone quarries comprised in Category A of the Bhargav Committee Report were the same lime stone quarries which were classified in category 1 by the Working Group." But we are now informed that this impression created in our mind was erroneous, since the lime stone quarry comprised in lease No. 67 is placed in category A by the Bhargav Committee, but it falls in category II of the Working Group Report. Since this lime stone quarry, though falling within category A of the Bhargav Committee Report, is not placed in category 1 by the Working Group, we cannot allow mining operations to be carried on by M/s Anand Bros. in this lime stone quarry and we must treat it on the same basis as the lime stone quarries classified as category B in the Bhargav Committee Report. We would accordingly direct that M/s Anand Bros. should not be allowed to carry on mining operations in this lime stone quarry but they should be at liberty to submit a full and detailed scheme for mining this lime stone quarry to the Bandyopadhyay Committee and if any such scheme is submitted, the Bandyopadhyay Committee will proceed to examine the same without any unnecessary delay and submit its report to the court whether in its opinion this lime stone quarry can be allowed to be operated in accordance with the scheme and if so, subject to what conditions and if it cannot be allowed to be operated, the reasons for taking that view. The Bandyopadhyay Committee in making its report will take into account the various aspects which we have directed it to take into account while examining the scheme or schemes which may be submitted in respect of lime stone quarries classified in category B in the Bhargav Committee Report.

4. We now proceed to consider Civil Miscellaneous Petition No. 16757 of 1985. This application has been made by M/s U.P. Minerals and it related to the lime stone quarry forming the subject matter of lease No. 8. The position in regard to this lime stone quarry is the same as that in regard to the lime stone quarry forming the subject matter of lease No. 67 to which we have referred in the preceding paragraph. It falls within category A of the Bhargav Committee Report but it is classified in Category II by the Working Group. Moreover it is situate within the limits of the City Board of Mussoorie. We would therefore give the same direction in regard to this lime stone quarry as we have given in regard to the lime stone quarry forming the subject matter lease No. 67.

5. We may add that so far as the lime stone quarries forming the subject matter of leases Nos. 67 and 8 are concerned, it is necessary to extend the time for them to submit their scheme or schemes to the Bandyopadhyay Committee. The Bandyopadhyay Committee has fixed 30th June 1985 as the limit of time within which scheme or schemes should be submitted by those covered by our order dated 12th March, 1985. Since some doubt was felt on a reading of our order dated 12th March 1985 whether the lessees of the lime stone quarries forming the subject matter of leases No. 67 and 8 were permitted to carry on mining operations without any further inquiry or whether their mining operations were directed to be stopped subject to approval of any scheme or schemes which may be submitted by them to the Bandyopadhyay Committee, they were not given notice by the Bandyopadhyay Committee, for submitting their scheme or schemes, and they could not therefore go ahead with the preparation of their respective schemes. We would consequently grant to the lessees of these two lime stone quarries time upto 31st July 1985 for submitting their scheme or schemes to the Bandyopadhyay Committee in terms of our order dated 12th March 1985 read with the present order.

6. We must then proceed to consider Civil Miscellaneous Petition No. 16437 of 1985. This application has been made by M/s Punjab Lime and Limestone Company for clarification of our order dated 12th March, 1985 in so far as it refers to the limestone

quarry forming the subject matter of lease No. 96. This limestone quarry lies in between the limestone quarry forming the subject matter of lease no. 14(i) and the limestone quarry forming the subject matter of lease No. 14(ii). There is no dispute that so far as limestone quarry comprised in lease no. 14(ii) is concerned, it falls within category A of the Bhargav Committee Report and category 1 of the Working Group Report and under our order dated 12th March 1985, M/s Punjab Lime and Limestone Company has been permitted by us to carry on mining operations in this limestone quarry. The question is whether the limestone quarry forming the subject matter of lease no. 96 also falls within the same category. It is clear that the limestone quarry comprised in lease no. 96 has been placed in category 1 by the Working Group and on a proper reading of the Bhargav Committee Report, we have no doubt that it has been classified as category A by the Bhargav Committee. We would therefore hold that M/s Punjab Lime and Limestone Company is entitled to carry on mining operations in this limestone quarry falling within lease no. 96 in the same manner in which they are permitted to carry on mining operations in the limestone quarry comprised in lease No. 14(ii). But for the purpose of carrying on mining operations in the limestone quarry falling within lease no. 96. M/s Punjab Lime and Limestone Company will not have any approach through the limestone quarry falling within lease no. 14(i). The limestone quarry comprised in lease no.96 will be operated independently without any approach being made to it through the limestone quarry falling within lease no. 14(i). So far as the limestone quarry falling within lease no. 14(i) is concerned, we would direct that M/s Punjab Lime and Limestone Company should not be allowed to carry on mining operations in this limestone quarry, but they should be at liberty to submit a full and detailed scheme for mining this limestone quarry to the Bandyopadhyay Committee and the Bandyopadhyay Committee will proceed to examine the same and submit its report to the Court whether this limestone quarry can be allowed to be operated in accordance with the scheme and if so subject to what conditions, and if it cannot be allowed to be operated, the reasons for taking that view. The Bandyopadhyay Committee in making its report will take into account the same aspects which we have directed it to take into account while examining the scheme or schemes which may be submitted in respect of limestone quarries classified in category B in the Bhargav Committee Report. The time for M/s Punjab Lime and Limestone quarry to submit their scheme or schemes in respect of the limestone quarry falling within lease No. 14(i) will stand extended upto 31st July, 1985.

7. That takes us to Civil Miscellaneous Petition No. 17896/85. This application has been made by L.D. Gujaral for extension of time for removal of the balance of the mined lease minerals which are still lying at the site of the limestone quarry forming the subject matter of lease no.24. The claim of L.D. Gujaral is that he has already removed a large quantity of mined lease minerals at the site pursuant to our order dated 12th March, 1985 but still a small quantity remains to be removed and he has therefore prayed that the time for removal of the same should be extended. Similar applications for extension of time for removal of the remaining mined lease minerals have also been made on behalf of M/s B.K. Industries, M/s Modern Minerals and Chemicals. V.P. Rajwanshi whom we have prohibited from removing any mined lease minerals from the site of his limestone quarry by our order dated 3rd May, 1985 has also reiterated his application for permission to remove the balance of the mined lease minerals lying at the site of his limestone

quarry. We do not think that we can grant any extension of time to L.D. Gujaral, M/s B.K. Industries and M/s Modern Minerals and Chemicals. They were given sufficient time to remove the mined lease minerals lying at the site of their respective limestone quarries and they ought to have removed such mined lease minerals within the time allowed to them. No further extension of time can be granted to them. The case of V.P. Rajwanshi is still worst because he has been prohibited by us from removing any mined lease minerals on account of clandestine illegal mining operations which he was found to be carrying on despite the closure of his limestone quarry by us. There can therefore be no question of granting any extension of time to him. Since, however, mined lease minerals are lying at the sites of these limestone quarries and they form part of the national wealth we would direct that so far as these four limestone quarries forming the subject matters of leases No. 24, 69, 70 and 71 are concerned the eco-task force shall take charge of these four limestone quarries and allow removal of the mined lease minerals lying at the sites of these limestone quarries by the respective lessees in the order in which they think fit. The lessees of these four limestone quarries will supply the necessary trucks and labour for removal of the mined lease minerals lying at the sites of their respective limestone quarries in accordance with the directions which may be issued from time to time by the officer in charge of the eco-task force. The responsibility for ensuring that the removal of the mined lease minerals takes place in accordance with this order shall be that of the officer in charge of the eco-task force and until the officer of the eco-task force gives directions to the lessees of these four limestone quarries for supplying trucks and labour for removal, none of these lessees shall be permitted even to visit his respective limestone quarry. These four limestone quarries shall remain in exclusive charge of the eco-task force and they shall be out of bounds for these lessees and their representatives until directions are given to them by the officer in charge of the eco-task force for sending their trucks and labour for removal of the mined lease minerals and such removal shall also take place under the strict and close supervision of the eco-task force. The time for removal to be granted by the officer in charge of the eco-task force shall not be more than 10 days from the point of time when directions are issued to the respective lessee for supply of trucks and labour. If any of these lessees does not remove the mined lease minerals lying at the site of his respective limestone quarry within a period of 10 days from the time when directions are issued to him to provide trucks and labour, the eco-task force shall be entitled to deal with such mined lease minerals in the manner they think fit and the lessees shall not be entitled to make any claim against the eco-task force or the State of Uttar Pradesh or the Union of India in respect of such mined lease minerals. We are informed by the learned counsel appearing on behalf of M/s B.K. Industries that they also have a ropeway in their limestone quarry forming the subject matter of lease no. 69. The eco-task force will permit access to M/s B.K. Industries for the purpose of removing such ropeway but such removal shall also be under the supervision of the eco-task force and shall be carried out in accordance with such directions as may be issued by the officer in charge of the eco-task force.

8. That leaves out only the question in regard to the mined lease minerals which are lying stacked on plots away from the limestone quarries from which they are mined and which are situated at places where there are no adjoining limestone quarries. The lessees of limestone quarries forming the subject matter of lease nos. 8, 24, 31 and 67

have applied to us that there should be no time limit set by us for removal of the mined lease minerals lying stacked at such plots. We are inclined to accede to this application since the plots on which mined lease minerals are said to be stacked are away from the limestone quarries and there is no danger or apprehension of the lessees clandestinely carrying on mining operations under the guise of the removal of the mined lease minerals if no time limit is set by us. We would therefore direct that if any mined lease minerals are lying stacked on plots in the vicinity of any limestone quarries, the lessees who have stacked mined lease minerals on such plots shall be permitted to remove the same without any specific time limit provided of course they make an application to the District Magistrate, Dehradun for permission to remove and such permission is granted by the District Magistrate, Dehradun. The District Magistrate, Dehradun shall have the right to assess the quantities of mined lease minerals lying on the plots within 2 weeks from the time when the application for permission for removal is made to him. The District Magistrate, Dehradun shall not make any unreasonable delay in the granting of such permission. But we may make it clear that if the District Magistrate, Dehradun is satisfied that something illegal or contrary to the orders of this Court is being done by any of the lessees, it will be open to him to refuse to grant such permission to the concerned lessee. This, however, does not apply to stacked mineral away from the mines as aforesaid.

SCALE (PIL) 1981-97 1611

RURAL LITIGATION & ENTITLEMENT KENDRA, DEHRADUN *Petitioner*

VS

STATE OF U.P. & ORS. *Respondent*

CORAM: AMARENDRA NATH SEN, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — LIMESTONE QUARRY — Reasons in support of the order dated 12.3.1985, (Reported in 1985(1) SCALE 408) given.

Amarendra Nath Sen, J.— We disposed of these two writ petitions by an order made on 12th March, 1985 by which we directed that the lime stone quarries classified in category C in the Bhargav Committee Report should not be allowed to be operated and the same direction of closing down the lime stone quarries should also apply to the lime stone quarries in the Sahsaro are Block even though they are placed in category B by the Bhargav Committee. We also directed by our order that so far as the other lime stone quarries classified as category B in the Bhargav Committee Report and category 2 in the working Group Report are concerned, they should not be allowed to continue nor should they be closed down permanently without further inquiry and we accordingly appointed a high powered committee consisting of several officers to examine any scheme or schemes which may be submitted by the lessees of these lime stone quarries and submit report to this Court on the question whether in its opinion a particular lime stone quarry can be allowed to be operated in accordance with the scheme and if so, subject to what conditions and if it cannot be allowed to be operated, the reasons for taking that

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Judgment dated September 30, 1985 in C.W.P. No. 82099 and 8821 of 1983. [1985(2) SCALE 906] view. We gave the same directions also in regard to the lime stone quarries classified as category A in Bhargav Committee Report and for category 1 in the Working Group Report and falling within the city limits of Mussoorie. We also directed by our order that the lime stone quarries placed in category 2 by the Working Group other then those which are placed in categories B and C by the Bhargav Committee should also not be allowed to be operated and should be closed down save and except for the lime stone quarries covered by Mining Leases Nos. 31, 36 and 37 for which we gave the same direction as in the case of lime stone quarries classified as category B in the Bhargava Committee Report. So far as lime stone quarries classified as category A in the Bhargava Committee Report and or category 1 in the Working Group Report and falling outside the city limits of Mussoorie are concerned we directed that they should be allowed to be operated subject to the observance of the requirements of the Mines Act, 1952, the Metalliferous Mines Regulations, 1961 and other relevant statutes, rules and regulations. This order made by us was a detailed order and we stated at the time when we made this order that we shall proceed to give detailed reasons for the same in due course.

2. I do not think it necessary to give any further reasons than those which are already stated in the order made by us on 12th March, 1985. Speaking personally for myself I think that the broad reasons have been adequately set out in the order and it would be an unnecessary exercise to elaborate them. We have referred in the order to the reports of the Bhargava Committee and the Working Group and we have accepted these reports. The Bhargav Committee has classified the lime stone quarries into three categories namely, A, B, and C while the Working Group has classified them into two categories, namely, 1 and 2. The lime stone quarries comprised in category A by the Bhargava Committee are the same as the lime stone quarries classified in category 1 by the Working Group and the lime stone quarries in categories B and C of the Bhargava Committee are classified in category 2 by the Working Group. Both the Bhargava Committee and the Working Group are unamimous in their view that the lime stone quarries classified in category A by the Bhargava Committee and category 1 by the Working Group are suitable for continuance of mining operations and they have give their reasons for taking this view. So far as the lime stone quarries in category C of the Bhargava Committee Report are concerned, they are regarded both by the Bhargava Committee and by the Working Group as unsuitable for continuance of mining operations and both are of the view that they should be closed down for reasons which they have given in their respective reports. I agree with the reasons given in the Reports of the Bhargava Committee and the Working Group. The only difference between the Bhargava Committee and the working Group is in regard to lime stone quarries classified in category B where the Bhargava Committee has taken the view that these lime stone quarries need not be closed down while the Working Group has definitely taken the view that these lime stone quarries are not suitable for further mining. I have preferred not to take the extreme view of the Working Group so far as the lime stone quarries classified in category B by the Bhargava Committee are concerned, but have instead given an opportunity to the lessees of those lime stone quarries to submit a scheme or schemes to the High powered committee constituted by us, so that if the high powered committee thinks that any particular lime stone quarry out of these can be allowed to be operated in accordance with such scheme or schemes, the court may allow such lime stone quarry to be operated subject to conditions which may be thought fit to be imposed. These are the reasons which have prevailed with me in making the order dated 12th March, 1985.

3. I wish to observe that though exploitation of mineral resources in the interest of industrial growth of the country is necessary, yet such mines should be so worked as not to disturb the ecology and not to affect the livelihood and the living conditions of a very large number of people. Advantage gained by working the mines for industrial growth and national development in a manner which may seriously prejudice the interests of a large number of human beings and disturb the ecological balance, may very much be out-weighted by the serious consequences which are likely to follow. Industrial development is necessary for economic growth of the country in the larger interests of the nation. If, however, industrial growth is sought to be achieved by haphazard and reckless working of the mines resulting in loss of life, loss of property, loss of basic amenities like supply of water and creation of ecological imbalance, there may ultimately be no real economic growth and no real prosperity. It is necessary to strike a proper balance. In my opinion the appropriate authorities at the time of granting leases should take all these facts and factors into consideration and should while granting lease of mines for exploitation of mineral provide for adequate safeguards. Had appropriate safeguards been provided at the time of granting of leases, it would not, indeed, have been necessary for us to direct the closure of so many mines and to good deal of sufferings of the people of the locality would have been avoided.

SCALE (PIL) 1981-97 1613

RAKESH CHAND NARAIN *Petitioner*

VS

STATE OF BIHAR *Respondent*

CORAM: V. BALAKRISHNA ERADI AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — MENTALLY ILL — MENTAL PATIENTS — Interim directions given.

1. After hearing both sides, we pass the following interim directions in this case to be given effect to forthwith by the State of Bihar :

(1) In respect of each patient in the Ranchi Mansik Arogya Shala the daily allocation for diet will be increased from the existing inadequate figure of only Rs. 3.50 to Rs. 10/- per day per patient and dietary articles of that value shall be supplied to each patient.

(2) Arrangements should be made forthwith to supply adequate quantity of pure drinking water to the hospital, if necessary, by engaging water tankers to transport potable water from outside.

(3) Immediate arrangements should be made for the restoration of proper sanitary conditions in the lavoratories and bathrooms of the hospital.

(4) All patients in the hospital who are not at present having mattresses and blankets should be immediately supplied the same within 15 days from today. Such of the patients who have not been given cots should also be provided cots within 6 weeks from today so that no patient shall be thereafter

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Order dated October 20, 1986 in W.P. (C/Crl.) No. 339 of 1986. [1986(2) SCALE 739] in respect of cost of medicines allowable for each patient will stand removed, with immediate effect and the patients will be supplied medicines according to the prescription made by the Doctors irrespective of the costs.

(6) The State Government shall forthwith take steps to appoint a qualified Psychiatrist and a Medical Superintendent for the hospital and they should be posted and take charge in the Institution within six weeks from today.

2. The Chief Judicial Magistrate, Ranchi to whom a copy of this order will be forwarded by the Registry shall visit the hospital once in 3 weeks and submit quarterly reports to this Court as to whether the aforesaid directions given by us are being complied with.

3. Notice will issue to the States of West Bengal and Orissa calling upon them to submit their counter affidavits within 4 weeks from today.

4. List this case for further orders after six weeks from today.

SCALE (PIL) 1981-97 1614

RURAL LITIGATION AND ENTITLEMENT KENDRA & ORS. *Petitioners*

VS

STATE OF UTTAR PRADESH & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI. AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — LIMESTONE QUARRY — Environmental and ecological balance — Maintenance of — Quarrying and excavation of lime stone deposits for industrial purposes (reported in 1985(1) SCALE 403, 1985(2) SCALE 119 & 906) — Court disposed the writ petition with costs quantified at Rs. 10,000/-.

Ranganath Misra, J.— On March 12, 1985, after hearing counsel and parties appearing in person at great length this Court made a detailed order wherein it was said :

> "This case has been argued at great length before us not only because a large number of lessees of limestone quarries are involved and each of them has painstakingly and exhaustively canvassed his factual as well as legal points of view but also because this is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also in their implications to the welfare of the generality of people living in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger interest of the country. But since having regard to the voluminous material placed before us and the momentous issues raised for decision, it is not possible for us to prepare a full and detailed judgment immediately and at the same time, on account of interim order made by us, mining operations carried out through blasting have been stopped and the ends of justice require that the lessees of

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Judgment dated December 18, 1986 in W.P. No. 8203 of 1983 and W.P. No. 8821 of 1983 (D.N. Pandey v U.O.I.). [1986(2) SCALE 1083]

> limestone quarries should know, without any unnecessary delay, as to where they stand in regard to their limestone quarries, we propose to pass our order on the writ petitions. The reasons for the order will be set out in the judgment to follow later."

2. In the meantime, one of us our learned Brother Sen, J., has retired from the Court. Before that event happened, on 30th September, 1985, he delivered a judgment expressing his views on the matter. He indicated :

> "I do not think it necessary to give any further reasons than those which are already stated in the order made by us on 12th March, 1985. Speaking personally for myself, I think that the broad reasons have been adequately set out in the order and it would be an unnecessary exercise to elaborate them."

On a perusal of our order of the 12th March, 1985, we are inclined to agree with his view that the detailed order covered almost all the relevant aspects and touched upon every issue germane to the matter.

3. As this was the first case of its type with wide and serious ramifications, we would like to give a brief account of the manner in which the proceedings commenced, we carried on and are to be concluded.

4. By an order dated 14.7.1983, this Court directed a letter received from the Rural Litigation and Entitlement Kendra, Dehra Dun dated 2.7.1983 along with accompanying affidavits to be treated as a writ petition and issued notice to the State of Uttar Pradesh and the Collector of Dehra Dun. The main allegation therein related to unauthorised and illegal mining operations carried on in the Mussoorie Hills and the area around adversely affecting the ecology of the area and leading to environmental disturbances. Later on, another application was directed to be tagged on and both the applications were dealt with together. Several parties, mainly, mining lessees numbering more than 100, got impleaded either at the instance of the petitioners or on their own seeking. By a later order made in the month of July 1983, this Court directed all fresh quarrying to be stopped and called upon the District Magistrate and the Superintendent of Police of Dehra Dun District to strictly enforce that order.

5. On 11.8.1983, after hearing the counsel for parties then appearing, this Court appointed a Committee for the purpose of inspecting all the mines other than those belonging to the State of Uttar Pradesh and the Union of India, with a view to determining whether the safety standards laid down in the Mines Act, 1952, and the Miens Rules made thereunder were being observed or not and whether there was any danger of landslides on account of the quarrying operations particularly during the monsoon in any of the mines and if there was any other hazard to individuals, cattle or agricultural lands by reason of the carrying on of mining operations. Blasting operations in the area were also directed to be stopped. This Committee came to be known as the Bhargava Committee and its members were authorised to inspect the mines and give suitable directions. The Committee made its main report on the basis whereof this Court on August 24, 1983 permitted removal of limestone already quarried. The Committee directed closure of some of the mines and reported the defects appearing in the other mines and called upon the mine owners to carry out rectifications.

6. The Bhargava Committee classified the mines in the area into three groups being A, B and C. So far as the mines in Group C were concerned, the Committee was of the view that they were not suitable for continuance and should, therefore, be closed down. So far as the question related to the mines in Group A the Committee was of the opinion that the quarrying could be carried on without any environmental or ecological hazard. In regard to the B Group mines, the Bhargava Committee opined that those may not be closed down permanently though it did notice the adverse impact of their mining activities. In its order of 12th March, 1985, this Court took note of the fact that the Union Government had appointed a Working Group on mining of limestone quarries in Dehra Dun and Mussoorie area some time in 1983 and the Working Group was also headed by Shri Bhargava who was heading the Committee appointed by this Court. The other members of the Working Group were experts in the field and the Working Group had submitted the report in September 1983. A comparative analysis was made by this Court in regard to the mines by referring to both the reports. The Court found that the Working Group had taken these very mines for their study and had divided the mines into two categories-namely, Class I and Class II. It transpires that all the mines then categorised as Class I were now included by the Bhargava Committee in Group A and the remaining mines now classified as Group B and C by the Bhargava Committee were in Ciass II.

7. This Court had also appointed an Expert Committee with Professor Valdia and two Members mainly to consider the problems of ecology and environment with reference to mining. Professor Valdia gave a separate report while the other two members gave a joint report. Dealing with the separate report furnished by Professor Valdia, this Court in its order of March 12, 1985 stated :

> "We may observe straightaway that we do not propose to rely on the report of Professor Valdia who was one of the Members of the Expert Committee appointed by our order dated 2.9.1983 as modified by the order dated 23rd October, 1983. This Committee consisted of Professor Valdia, Shri Hukum Singh and Shri D.N. Kaul and it was appointed to enquire and investigate into the question of disturbance of ecology and pollution and affectation of air, water and environment by reason of quarrying operations or working of stone crushers or limestone kilns. Shri Hukum Singh submitted a joint report in regard to various aspects while Professor Valdia submitted a separate report. Professor Valdia's report was confined shortly to the geological aspect and in his report he placed considerable reliance on the Main Boundary Thrust (shortly referred to as M.B.T.) and he took the view that limestone quarries which were dangerously close to M.B.T. should be closed down, because they were in the sensitive and vulnerable belt. We shall examine this report in detail when we give our reasons but we may straightaway point out that we do not think it safe to direct continuance or discontinuance of mining operations in limestone quarries on the basis of M.B.T."

At the further hearing after the said order, parties did not address arguments with reference to M.B.T. and we are of the view that this topic need not be dealt with by us. In 12th March 1985 order we directed that the limestone quarries located in Sahasradhara Block and placed in Category II by the Working Group should be closed down. We further said :

> "We would also direct, agreeing with the Report made by the Working Group that the limestone quarries placed in Category II by the Working Group other than those which are placed in Categories B and C by the Bhargava Committee should also not be allowed to be operated and should be closed down save and except for the limestone quarries covered by the mining leases numbers 31, 36 and 37 for which we will give the same direction as we are

> giving in the succeeding paragraphs in regard to the limestone quarries classified as Category B in the Bhargava Committee Report. If there are any subsisting leases in respect of any of these limestone quarries they will forthwith come to an end and if any suits or writ petitions for continuance expire or unexpired leases in respect of any of these limestone quarries are pending, they too will stand dismissed."

8. This Court directed closing down of the mines in A Category located within the municipal limits of Mussoorie.

9. In regard to B Class quarries of the Bhargava Committee Report which featured in Category II of the Working Group Report, as also of the A Category within the municipal limits, we set up a Committee under the chairmanship of Shri D. Bandyopadhyay, then Secretary in the Ministry of Rural Development and called upon the mine owners to submit a full and detailed scheme to that Committee which would examine the said scheme keeping in view the provisions of the law as also the expediency of allowing mining operations in the area and report to the Court about the same. We have directed that until further orders from this Court on the basis of Bandopadhyay Committee report these mines shall not be worked. It may be pointed out that the Bandopadhyay Committee has submitted its report rejecting the schemes put forward by various lessees of the mines which have been closed down and on 20th November, 1986, this Court has directed :

> "We are informed that Bandopadhyay Committee has submitted its report rejecting the schemes put forward by various erstwhile lessees of the mines which have been closed down now. This report was made as far back as in April 1986 and those who wanted to raise objections, ought to have done so within a reasonable time after the report was submitted and those who have failed to do so, we cannot shut them out and prevent them from raising their objections; and in any event delay in filing cannot prejudice public interest since stone quarrying had already closed down. We would, therefore, grant time to the erstwhile lessees of mines, who wish to raise objections, to file their objections within six weeks from today and reply, if any, to those objections may be filed on behalf of the petitioners and the State of Uttar Pradesh within four weeks thereafter.
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> The old record of the case may also be kept in Court at the time of the hearing of this Writ Petition.
>
> Writ Petition will come up for hearing on 3rd Tuesday in February 1987 before a Bench of which Hon'ble Mr. Justice Ranganath Misra in a member."

10. From the aforesaid order it is clear that in view of the directions given by this Court the question still remains to be considered whether the schemes submitted by the mine lessees to the Bandopadhyay Committee under our Order dated 12th March 1985 have been rightly rejected or not and whether under those schemes, the mine lessees can be allowed to carry on mining operations without in any way adversely affecting environment or ecological balance or causing hazard to individuals, cattle and agricultural lands. This question would, of course, have to be decided in the light of the view taken by us in our Order dated 12th March 1985 and the present judgment.

11. The Himalayan range on the Northern Boundary of India is the most recent mountain range and yet it is the tallest. It has formed the Northern boundary of the country and until recent times provided an impregnable protection to the Indian sub continent from the Northern direction. This mountain range has been responsible to regulate the monsoons and consequently the rainfall in the Indo-gangetic belt. The Himalayas are the source for perennial rivers-the Ganges, Yamuna and Brahmputra as also several other tributaries which have joined these main rivers. For thousands of years nature has displaced its splendour through the lush green trees, innumerable springs and beautiful flowers. The Himalayas has been the store house of herbs, shurbs and plants. Deep forests on the lower hills have helped to generate congenial conditions for good rain.

12. The Doon Valley has been an exquisite region bounded by the Himalayan and the Shivalik ranges and the Ganga and Yamuna rivers. The perennial water streams and the fertile soil have contributed not only to the growth of dense lush green forests but have helped the yield of basmati rice and leechis. Mussoorie, known as the queen of Indian hill stations situated at a height of 5000 ft. above sea level and Dehra Dun located below the heights have turned out to be important places of tourist attraction, centres of education, research and defence complex.

13. At present the Valley is in danger because of erratic, irrational and uncontrolled quarrying of limestone. The landscape has been striped bare of its verdant cover. Green cover today is about 10 per cent of the area while from decades age it was almost 70 per cent.

14. The limestone belt has acted as the aquifer-to hold and release water perennially. All the important streams-Song, Baldi, Rispana, Kairuli and Bhitarli originate from this area. Reckless mining, careless disposal of the mine-debris and random blasting operations have disturbed the natural water system and the supply of water both for drinking and irrigation has substantially gone down. There is a growing apprehension that if mining is carried on in this process, a stage will came when there would be dearth of water in the entire belt.

15. About a hundred years back around the middle of the last century, Britishers penetrated into the area and developed Mussoorie as a Hill Resort. The existence of huge limestone deposits came to be discovered by the beginning of this century. Quarrying operations on small scale began. Direct human interference in limestone quarrying seems to have begun in 1900. Around 1904 all the quarries were declared as property of the Government and as appears from the Bandopadhyay Report, in the year 1911 there existed only four limestone quarries. It had been working in the Dehra Dun area. Around 1947, limestone quarrying took a new turn and a number of persons who had migrated from Pakistan started working on limestone deposits by quarrying in private lands. In 1949, the Minerals Concession Rules made by the Central Government under the Minerals Regulations Act, 1948, authorised grant of mining leases and several applicants came forward for quarrying of high grade limestone. Until 1962, extraction of limestone was permitted on temporary permits by the State Government of Uttar Pradesh.

16. In these proceedings we came across 105 mining leases and these, as the various reports have indicated, had direct environmental impact on the area. It is said that the limestone deposits in this area are of high grade having upto 99.8 calcium carbonate. Mining operations in these areas have led to cutting down of the forest. Digging of limestone and allowing the waste to roll down or carried down by rain water to the lower levels has affected the villages as also the agricultural lands located below the hills. The naturally formed streams have been blocked. Blasting has disturbed the natural quite, has shaken the soil, loosened the rocky structures and disturbed the entire ecology of the area. For removing the limestones quarried from the mines, roads have been laid and for that purpose the hills have been interfered with; traffic hazard for the local population-both animals and men-has increased.

17. The limestone quarries in this area are estimated to satisfy roughly three per cent of the country's demand for such raw material and we were told during the hearing that the Tata Iron and Steel Company is the largest consumer of this limestone for manufacture of a special kind of steel. At the present rate of mining, the deposits are likely to last some 50 years. It is for the Government and the Nation-and not for the Court-to decide whether the deposits should be exploited as the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilisation that would indeed be a matter for an expert body to examine and on the basis of appropriate advice, Government should take a policy decision and firmly implement the same.

18. Government-both at the Centre and in the State-must realize and remain cognizant of the fact that the stake involved in the matter is large and far-reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery of India, as some doubt, may perish and the Thar Desert may expand its limits.

19. Consciousness for environmental protection is of recent origin. The United Nations Conference on World Environment held in Stockholm in June 1972 and the follow-up action thereafter is spreading the awareness. Over thousands of years men had been successfully exploiting the ecological system for his sustenance but with the growth of population the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon Nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. The consequences of such interference with ecology and environment have now come to be realised. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. We had commended earlier to the State of Uttar Pradesh as also to the Union of India that afforestation activity may be carried out in the whole valley and the hills. We have been told that such activity has been undertaken. We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; there may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation.

20. We must place on record our appreciation of the steps taken by the Rural Litigation and Entitlement Kendra. But for this move, all that has happened perhaps may not have come. Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51A(g) of the Constitution.

21. We are of the view that the Kendra should be entitled to the costs of proceeding. We assess the same at Rs. 10,000/- and direct the State of Uttar Pradesh to pay the same either directly or through Court within one month.

SCALE (PIL) 1981-97 1620

COMMON CAUSE (A REGD. SOCIETY) *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, CJI., R.M. SAHAI AND N. VENKATACHALA, JJ.

PUBLIC INTEREST LITIGATION — CONTEMPT OF COURT — CONTEMPT OF COURT ACT — ADVOCATES ACT, 1961 — BAR COUNCIL OF INDIA (CONDUCT & DISCIPLINARY) RULES — Whether members of the legal profession can resort to the extreme step of abstaining from appearing in cases in which they are engaged and which are listed before the Court as a consequence of any strike call given by any body of members belonging to the legal profession — Held,

A. Instead of going into larger question at this stage, by way of interim arrangement, the Court issued following directions:- (1) In the rare instance where any association of lawyers including statutory Bar Councils considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps. (2) No such member who appears in court or otherwise practices his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat or expulsion therefrom. (3) The above will not preclude other forms of protest by practising lawyers in courts such as, for instance, wearing of arm bands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession. (4) Office-bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (1) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (1), (2) and (3) above.

1. Pursuant to this Court's order of 11th January, 1994 directing public notice to issue to the Bar Associations and State Bar Councils all over the country in the nature of a notice under Order 1 Rule 8 C.P.C. certain bodies of the Bar filed their responses. Thereafter, the matter came up before this Court on different dates, lastly on October 27, 1994 when this Court suggested that a meeting be called to consider the various suggestions made by the Bar Associations/ State Bar Councils in their response to this Court. Accordingly Sri Shankar Das acting as Convenor called a meeting on 20th November, 1994 at which besides the learned Attorney General, Mr. F.S. Nariman, President, Bar Association of India, Sh. K.K. Venugopal, President, Supreme Court Bar Association, Mr. V.C. Mishra, Chairman, Bar Council of India and Mr. H.D. Shourie, the petitioner herein, were invited to attend. Mr. V.C. Mishra and Mr. K.K. Venugopal were not able to attend for personal reasons. As per the discussions that took place at the meeting a consensus emerged to the effect that instead of the Court going into the wider question whether members of the legal profession can resort to the extreme step of abstaining from appearing in cases in which they are engaged and which are listed before

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Order dated December 7, 1994 in W.P. No. 821 of 1990 (With I.A. No. 5/94 in W.P. (C) No. 320 of 1993). [1995(1) SCALE 6] the Court as a consequence of any strike call given by any body of members belonging to the legal profession, it would be desirable to work out an interim arrangement and see if the same operates satisfactorily.

2. The Officiating Secretary, Bar Council of India, Mr. C.R. Balaram filed an affidavit on behalf of the Bar Council of India wherein he states that a 'National Conference' of members of the Bar Council of India and State Bar Councils was held on 10th and 11th September, 1994 and a working paper was circulated on behalf of the Bar Council of India by Mr. V.C. Misra, Chairman, Bar Council of India, inter alia on the question of strike by lawyers. In that working paper a note was taken that Bar Association had proceeded on strike on several occasions in the past, at times, State-wide or Nationwide, and 'while the profession does not like it as members of the profession are themselves the losers in the process' and while it is not necessary to sit in judgment over the wider question whether members of the profession can at all go on strike or boycott of courts, it was felt that even if it is assumed that such a right enures to the members of profession, the circumstances in which such a steps should be resorted should be clearly indicated. Referring to an earlier case before the Delhi High Court it was stated that the Bar Council of India had made its position clear to the effect "(a) Bar Council of India is against resorting to strike excepting in *rarest of rare* cases involving the dignity and independence of the judiciary as well as of the Bar; and (b) whenever strikes becomes inevitable, efforts shall be made to keep it short and *peaceful* to avoid causing hardship to the litigant public." (emphasis supplied). It was in response to the above that a consensus emerged at the Bar at the hearing of the matter that instead of the Court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from a pearing in cases in Court in which they are engaged, the Court may see the working of the interim arrangement and if that is found to be satisfactory it may perhaps not be required to go into the wider question at this stage. Pursuant to the discussion that place at the last hearing on 30th November, 1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India's thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to avoid causing hardship to the litigant public. The learned counsel suggested that to begin with the following interim measures may be sufficient for the present:-

> "(1) In the rare instance where any association of lawyers including statutory Bar Councils considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps.
>
> (2) No such member who appears in court or otherwise practices his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat or expulsion therefrom.
>
> (3) The above will not preclude other forms of protest by practising lawyers in courts such as, for instance, wearing of arm bands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.
>
> (4) Office-bearers of a Bar Association (including Bar Council) responsible for

taking decisions mentioned in clause (1) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (1), (2) and (3) above."

3. Mr. P.N. Duda, Sr. Advocate representing the Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate Clauses (1), (2), (3) and (4) in the Bar Council of India (Conduct & Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in clauses (1) to (4) above for a period of atleast six months by making the said clauses the rule of the Court. Accordingly we make clauses (1) to (4) mentioned above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. We also suggest to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in Court notwithstanding strike calls given by the Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of Judge of different Courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases.

4. The matter will stand adjourned by six months to oversee the working of this interim order. It is hoped that it will work out satisfactorily. Liberty to mention in the event of any difficulty.

5. We are grateful to Mr. Shourie for highlighting the issue. We are grateful to the learned Attorney General and all the other learned counsel appearing before us for their positive contribution and broad out-look to solving the vexed problem of strikes. We do hope that we will not have an occasion to recall this matter on the ground that there has been any contravention of any of the above classes. On this optimistic note we adjourn the matter for six months.

SCALE (PIL) 1981-97 1622

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COASTAL AREAS — ENVIRONMENT (PROTECTION) ACT, 1986 rw ENVIRONMENT (PROTECTION) RULES, 1986 — R.5(3) (d) rw NOTIFICATION DT. FEBRUARY 19, 1991 — COASTAL AREAS CLASSIFICATION AND DEVELOPMENT REGULATIONS — ANNX. 1 — Development activities for beach/resorts/hotels etc — Court modifies its order of 12.12.1994.

Order dated March 9, 1995 in W.P. (C) No. 664 of 1993. [1995(2) SCALE 146]

1. We have heard Mr. Shanti Bhushan, Mr. Kapil Sibal, Mr. Ashok Desai, Mr. D.V. Sehgal and other learned counsel appearing in this case. We modify our order dated December 12, 1994 and direct that all the restrictions, prohibitions regarding construction and setting up of industries or for any other purpose contained in the notification dated February 19, 1991 issued by Ministry of Environment and Forest, Government of India under clause (d) of sub rule (3) of rule 5 of the Environment (Protection) Rules, 1986 shall be meticulously followed by all the concerned States. The activities which have been declared as prohibited within the Coastal Regulation Zone shall not be undertaken by any of the respondent-States. The regulations of permissible activities shall also be meticulously followed. The restrictions imposed by the Coastal Areas Classification and Development Regulations contained in Annexure 1 to the above said notification shall also be strictly followed by the respondent-States.

2. Mr. M.C. Mehta, learned counsel for the petitioner has contended that this Court should constitute a central authority and also in addition an authority in each of the coastal States/Union Territories in terms of Section 3(3) of the Environment (Protection) Act, 1986. He has given a list of eminent persons in environmental field who can be asked to be members of the said authority. This matter needs further consideration and final decision in this respect shall be taken after hearing Mr. Mehta and other learned counsel for the parties.

3. Mr. Mehta has also placed on record the interim site visit report dated October 18, 1994 of the committee constituted by the Ministry of Environment and Forest, Government of India for inspection of violations of norms and guidelines prescribed for developmental activities for beach/resorts/ hotels etc. in the Coastal Regulation Zone of the State of Goa. We have examined the report and we find that the committee has done a useful work. We issue notice to the Ministry of Environment and Forest, Government of India through its Secretary and also to the State of Goa to file affidavits indicating the action taken in respect of the report of the committee. The Government of India shall furnish a copy of the report to the State of Goa if it has not already been done. The affidavits shall be filed by the Government of India and the State of Goa within two weeks of the receipt this order.

SCALE (PIL) 1981-97 1623

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: KULDIP SINGH AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — COASTAL AREAS — ENVIRONMENT PROTECTION RULES, 1986 — RULE 5(3) — Coastal Regulation Zone — Court directed all the respondent States not to permit the setting up of any industry or the construction of any type of the area atleast upto 500 metres from the sea water at the maximum High Tide. The above said area i.e. from the High Tide Level up to 500 metres shall be kept free from all construction of any type.

Order dated December 12, 1994 in W.P. (C) No. 664/93 A/N with W.P. (C) No. 561/94 A/N. [1995(2) SCALE 584]

1. Ministry of Environment and Forests, Govt. of India, issued a Notification dated February 19, 1991, under Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 wherein it was declared that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwater which are influenced by the tidal action (in the landward side) upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL are Coastal Regulation Zone. The Central Govt. has imposed various restrictions in the said Notification. Mr. Mehta, learned advocate, appearing for the petitioners states that despite the issue of the Notification un-authorised industries and other construction is being permitted by various States within the area which has been declared as Coastal Regulation Zone. The respondent States are in the process of filing the replies to the writ petition. Meanwhile we direct all the respondent States not to permit the setting up of any Industry or the construction of any type on the area atleast upto 500 meters from the sea water at the maximum High Tide. The above said area i.e. from the High Tide Level up to 500 metres shall be kept free from all construction of any type.

2. The respondents may if they so wish file their replies within six weeks from today. A copy of this Order be sent to all the States within one week. We issue notice to the State of Goa and other States impleaded in I.A. No.1. The interim order shall be operative in respect of these States also.

3. The Writ Petitions be posted after six weeks.

SCALE (PIL) 1981-97 1624

SUPREME COURT BAR ASSOCIATION *Petitioner*

VS

STATE OF U.P. & ORS. *Respondents*

CORAM: A.M. AHMADI, CJI, J.S. VERMA AND K. RAMASWAMY, JJ.

PUBLIC INTEREST LITIGATION — CONTEMPT OF COURT — CONTEMPT OF COURT ACT — Clash between Lawyers and Police — Court grants two months time to enable the counsels to work out a formula to avoid such incidents and particularly keeping in view the guidelines framed by the Court regarding Lawyers strike (reported in 1995(1) SCALE 6).

Referred: Common Cause (A Registered Society) vs Union of India & Ors. (1995(1) SCALE 6).

1. When this matter was called on for hearing today, Mr. V.M. Tarkunde, learned Senior Counsel appearing for some of the contemners made a suggestion that having regard to the passage of time and feelings having been cooled down, it may perhaps be appropriate to accept the apology submitted by the contemners and close the chapter. We would have been inclined to consider the suggestion had it been supported by some formula which would assure us that such ugly incidents will not recur in future. On this, the learned senior counsel appearing for different parties including the State Government, stated that if the matter is postponed for some time they would put their heads together to see if

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Order dated February 21, 1995 in W.P. (C) No. 553 of 1994 with T.P. (C) No. 379-380/94 (Supreme Court Bar Association v. State of U.P. & Ors). [1995(2) SCALE 74] a lasting solution could be evolved which would be in the nature of a Code to be adhered to by the members of the Bar practicing throughout the country. We also have impressed upon them the need to evolve a lasting and durable solution as incidents of this nature have a direct impact on the independence of the Judiciary throughout the country. We say this since we desire the senior counsel to work out a solution as they too realise that the situation has reached a stage beyond which it cannot be allowed to drift. We, therefore, think that the time has come when all concerned with the Judicial Administration in this country right from the grass-roots level to the highest court in the country must feel concerned about the effect of such actions and behaviour, including frequent strikes, has on the independent functioning of the courts throughout the country. We, therefore, accede to the request jointly made by counsel to adjourn this matter for some time to enable them to meet and evolve a formula of a durable nature which would be in keeping with the dignity of the Courts at all levels and would ensure that the independence of the Judiciary is in no manner affected. We adjourn this matter by two months to enable the learned Attorney General to take the initiative of convening a meeting and we do hope that the Committee that may be constituted for the purposes of evolving a formula would keep in view the events that have taken place even after this Court's Order in the matter of *Common Cause (A Registered Society) vs. Union of India & Ors.* dated December 7, 1994 in W.P. 821/90 (1995(1) SCALE 6).

2. List the matter on 25th April, 1995.

3. We take note of the fact that contemners No. 12 - Mr. Krishnamurthy Singh Yadav is not present for medical reasons.

SCALE (PIL) 1981-97 1625
M.C. MEHTA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondent*

CORAM: KULDIP SINGH AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — HAZARDOUS INDUSTRIES IN DELHI — An update order pursuant to the order reported in 1996(1) SCALE (SP)40 — Court directs Pollution Board to investigate the actual working of the industry run by Harsharan Singh Balli (Minister of Industries, N.C.T. Delhi) for the last 10 years and also whether sulphuric acid and other chemicals were being used in the process of electroplating and whether any pollution control devices have been installed.

1. Pursuant to this Court's Order dated January 24, 1996 Mr. Harsharan Singh Balli, Minister - Industries, N.C.T., Delhi, has filed an affidavit dated February 5, 1996. In para 3.7 of the affidavit it is stated that in 1986 he commenced the business of electroplating of iron and steel products and manufacturing of various items in the premises. He further states that he has obtained necessary permission and registration for the said electroplating units. According to him the functioning of electroplating is carried out in Delhi and is not a prohibited industrial activity. It falls outside the definitions of Industries classified as "Hazardous Industries". He further states that he has

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Order dated February 6, 1996 in I.A. No. 22 in W.P. (C) No. 4677/85. [1996(2) SCALE (SP) 48] installed the necessary pollution control devices. He has stated that the electroplating unit is running since 1986 and according to him such an industry is not prohibited in Delhi. He states that electroplating, minaplating and engraving are classified as Item 87, Group `B' Industries in the "Master Plan 2001" for the National Capital Territory of Delhi. He further states that there are several thousands such small electroplating units situated all over Delhi in conforming and non-conforming zones. In the last paragraph it is stated that his action in running the said electroplating unit has been under the bonafide belief that such a unit is permitted and is not banned.

2. Mr. Mehta on the other hand states that this is a Noxious Industry and cannot operate in Delhi. According to him sulphuric acid and other chemicals are used in the process of electroplating and in the operation of the Industry. We direct the Central Pollution Control Board to send a team of experts within two days from today to inspect the Industry. Although according to the affidavit filed by Mr. Balli, the Industry has been closed, but the Board team shall investigate and find out the actual working of the Industry during the past about 10 years. The Board shall find out as to whether the sulphuric acid and other chemicals were being used in the process of the electroplating unit and the Industry has installed pollution control devices. If so, since when.

3. To come up on February 9, 1996.

SCALE (PIL) 1981-97 1626

RURAL LITIGATION & ENTITLEMENT KENDRA & ORS. *Petitioners*

VS

STATE OF U.P. & ORS. *Respondents*

CORAM: RANGANATH MISRA, P.B. SAWANT AND K. RAMASWAMY, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — LIMESTONE QUARRY — Mining operations ordered to be stopped — Court disposes of various applications by giving directions.

Ranganath Misra, J.

A

1. On 30th of August, 1988, while disposing of two writ petitions being Nos. 8209 and 8821 of 1983, this Court came to the conclusion that the entire mining operation in the Doon Valley should come to a halt. With a view to effectuating this conclusion all mining activity was directed to be stopped excepting in the case of a few for reasons indicated in that order.

2. Several applications thereafter came before this Court for permission to remove stacked material and almost for one and a half years now, many rounds of such applications have been filed before this Court which have led to inquiries being made by executive authorities, a joint inspection by the District Judge and the District Magistrate as also separate reports from the Monitoring Committee appointed by this Court. After hearing parties in some cases the Court has granted permission for removal and extended time for appropriating the mined material. On

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Judgment dated May, 4, 1990 in I.A. Nos. 1, 3 & 10 of 1989 & 12 of 1990 (in W.P. (C) No. 8209/83) with WP 151/90, Letter dated 28, 1989 CMP 11756/88 in WP 8821/83, IAS. 5-7 & 9/89, in WPs 8209 & 8821/83, CMPs. 18702-03/89, in WP. 8209/83, IA 4/89 in WPs. 8209 & 8821/83, and Contempt Petition No. 25/89 in W.P. 8209/83. [1990(1) SCALE (SUPP.) 97] the plea that within the time given by the Court removal was not possible, fresh extensions of extended dates have also been asked for.

3. At one stage, the Monitoring Committee reported that taking advantage of such extensions further mining was being illegally undertaken. The Monitoring Committee also pointed out that where the mined material was spread over it had consolidated and grass as also other vegetations have started growing. In these circumstances, while either allowing or rejecting the applications for removal or extension or allowing removal under restrictions, this Court has been expressing itself clearly that the Doon Valley should be made available for afforestation to make good the loss that had been caused to the ecology and that work should no longer be interfered with.

4. A fresh set of applications have now been made for permission to remove the mined material, machinery and/or extension of time for the same. This Court had called for a report on the basis of joint inspection by the District Judge and the District Magistrate of Dehradun and after the said report was received, the Monitoring Committee has made its report on the basis of this Court's direction. A group of these applications had been heard on 12th of February, 1990, but as some other applications remained to be disposed of on the basis of the report of the Monitoring Committee which was yet to be received, no orders had then been made. The Monitoring Committee sent its report dated 6th of April, 1990, and the other group of applications which were then pending have in the meantime been heard on 26th of April, 1990. We proceed to dispose of all the pending applications by this order.

5. We have considered the submissions with some amount of anxiety particularly as we are of the definite view that the Doon Valley should be left free to the planters for reafforestation and the mine-owners should be put out in every respect of the same. Two or three aspects have, however, to be borne in mind while dealing with a case of this type. Mining was stopped by our order all of a sudden within a month from 30th of August, 1988. Though fresh mining is stopped, mined material which had been appropriated by the mine-owner by his own efforts should ordinarily be allowed to be taken by him. There is no doubt that the mined material has been loosened from the original place by digging and even if it is allowed to be stacked, consolidation of such material is bound to take quite some time and within one year it is not likely to consolidate appropriately. The mined material has a market and with the closure of the mining operation substantially in the Doon Valley, this material seems to have been fetching good price as there is demand for the same. When mining was stopped, no compensation was provided and the only hope our order held out was rehabilitation.

6. At this stage, it is appropriate to extract a portion from the letter of the Chairman of the Monitoring Committee dated April 6, 1990, addressed to the Registrar of this Court. The Chairman is no other than the Secretary to the Government of India in the Ministry of Environment and Forests. He has pointed out:

> "The Committee would seek the indulgence of the Court to submit to the Hon'ble Justices that the areas ravaged by these mines including the roads leading to the mine areas are in immediate need of afforestation to consolidate the soil and prevent soil erosion. Permission granted to the miners will inevitably delay the process of afforestation and will destroy any natural vegetation that has come up along the roads and the mine areas since the last monsoon. Shri David Paul (Lease No. 99) in fact broke several check dams in the process of lifting material taking

advantage of this Court's orders granting him permission to remove quarried material. The process of afforestation of these areas cannot even be started as long as various applications of these miners for removal of material are pending before this Hon'ble Court. It is humbly submitted that this Court must, therefore, once and for all, put an end to such applications, in order that the Monitoring Committee may vigorously take up the task of afforestation of these areas."

7. We can quite appreciate the anxiety of the Monitoring Committee that initial permission and extension of time for removal has disturbed afforestation. The Monitoring Committee must, however, appreciate that the enthusiasm which it is prepared to exhibit has to be sobered down in the initial period by such judicial directions as are called for taking the cause of equity and justice into consideration.

8. Even in such of the cases where permission or extension for removal would be granted now, we are of the view that the mine- owners should not be permitted to-operate and the District Magistrate should set up a machinery under his control and subject to the supervision of the Monitoring Committee to enable removal. We do not propose to allow the process of removal to continue beyond 15th of June, 1990. The process of afforestation for the year would begin only by that time awaiting the onset of the monsoon. The ex-lessees in whose case original or extended orders permitting removal would now be made have, therefore, to contact the District Magistrate within one week of this order and the District Magistrate would work out removal on appropriate payment from the respective areas of the ex-lessees of the extracted material as mentioned in this Court's order of today on or before 15th June, 1990. We make it clear that no application either for original permission or for extension shall hereafter be entertained by this Court and the Registry is directed by this order not to entertain such petitions. It may be that such direction may affect some one who has not been vigilant or has on account of some other difficulty or hardship been not able to remove the stacked material within his leasehold area in the Doon Valley; but taking the broad interests of the entire Valley into account such individual losses or inconveniences have to be sacrificed and/or overlooked and equities can no longer be allowed to be invoked.

B

INTERLOCUTORY APPLICATIONS IN DISPOSED OF WRIT PETITION No. 8209/83)

I.A. NO. 1 OF 1989

9. This application is by the former lessee of lease No. 16 - Ved Pal Singh Chaudhary. The mine closed down on 30th of September, 1988 in terms of this Court's direction dated 30.8.1988. The first report on the record is dated 18th of February, 1989, jointly given by the Additional District Magistrate, Dehradun, D.P. Sharma, Geologist of Dehradun and the Forest Range Officer, Mussoorie. This report indicated that limestone extracted was found lying scattered in different marble pits and also heaps of different shapes, the estimated quantity in the heaps appeared to be 11,500 metric tons. This Court permitted removal of the mined material and the report of the Monitoring Committee shows that between March and May, 1989, with extensions obtained from the Court, 11,539 metric tons have already been removed.

10. The joint inspection report of the District Judge and the District Magistrate has indicated that there was no fresh mining in the area after 30th of August, 1988, and it appeared that the scattered material had been collected and removed while the stack has remained untouched. The present petition is for removal of the stack which is claimed to be more than 11,000 metric tons.

11. The Monitoring Committee on the basis of the fact that 11,539 metric tons had been removed has assumed that there must have been fresh mining to justify the presence of the stack. It has also indicated the report that there is no danger whatsoever of any scree or stacked material rolling down and affecting and choking the streams. According to the Committee, giving fresh opportunity for removal would encourage illicit mining and several mine-owners are likely to carry on that clandestinely. Keeping the two reports in view, we are inclined to hold that there has been no fresh mining and the stack now found is the old one; it would not be appropriate to assume that the stack has consolidated nor is it possible that the vegetation on such a stack would grow within a year. For the reasons we have already indicated earlier we think it appropriate that examine owner of lease No. 16 should be permitted to have the existing stacked material of 11,500 metric tons removed from the leasehold area but the same shall be through the agency set up by the District Magistrate on terms of payment and the removal shall be completed on or before the 15th June, 1990. It is made clear that the removal shall be supervised by the Monitoring Committee.

I.A. Nos. 3 & 10 of 1989 and 12 of 1990

12. These are applications made on behalf of Punjab Lime & Limestone Company for extension of time for lifting the mined material lying in the first two lease areas held by the aforesaid lessee and for original permission for the lease No. 96. Under the final order of this Court dated 30th August, 1988, [1988 (3) JT 707] in Paragraph 51 of the decision three mines including lease No. 96 valid up to 12.12.1989 were permitted to work. Therefore, mining activity in respect of lease No. 96 must have stopped after 12th December, 1989. The joint inspection report of the District Judge and the District Magistrate indicated that 2,269 metric tons of material were lying at the face of the mine in lease No. 14/ii while in regard to lease No. 14/i there was no material found and the scattered scree was reported to have totally stablished. The Monitoring Committee has opposed removal from lease No. 14/ii by saying that permission to remove had been given and utilised. We are of the view that the petition in regard to lease No. 14/i should be rejected in view of the concurrent reports of the joint inspection and the Monitoring Committee that the scree has already consolidated. So far as 2,269 metric tons from lease No. 14/i are concerned there is no particular reason to take a different view and we direct that the same shall be removed through the machinery set up by the District Magistrate upon payment of the cost by the ex-mine- owner. This removal shall also to be made prior to 15th June, 1990.

13. Lease No. 96 closed down operations on 12th December, 1989. 5000 metric tons of limestone are claimed to have been scattered over the area and reliance is placed upon the rule permitting six months' time from the date of closing for removal of such material. The Monitoring Committee has reported that there was no scree lying on the leased area. It found that there is some scattered material on the surface of the mine which cannot conveniently be stacked up. Since this is the first application of the ex-lessee after the mining has been closed, we would have directed the Monitoring Committee to make a fresh inspection in the presence of the ex-mine-owner but in view of the clear report that there was no stacked material found by the Monitoring Committee and the further fact stated in the report that the scree has already consolidated even during the currency of the mining lease, we do not think it will be appropriate at this stage to permit any removal. The petition is accordingly dismissed.

I.A. Nos. 5 & 6 of 1989

14. This petition is by the legal representatives of C.G. Gujral who was lessee of lease No. 76. The first petition is for substitution of his legal representatives. It is allowed. So far as the second one is concerned, the legal representatives of Shri Gujral, ex-mine-owner requests for permission for removal of the extracted mineral as also some machine parts from the leasehold area. At the instance of Shri Gujral this Court on 30.1.89 had made the following order:

> "Heard learned counsel in C.M.P. for permission to remove the mining material already lying at the quarry site. Subject to the verification by the Collector either personally or by a responsible officer that the allegation is correct, removal may be permitted. The entire stock either near the quarry or stocked in the stacking site should be removed within four weeks from the day permission is granted...."

15. It is alleged that soon after on 18th September, 1989, C.G. Gujral, original mine lessee died and his legal representatives had instituted a suit. The suit has now been dismissed by a separate order of this Court and interim relief granted has also been vacated. This petition filed in July, 1989, seeks permission for removal of the stocked material and for permission to remove the machinery which comprises of compressors and tools said to be lying at the mine-site. The joint inspection report indicates that the mine site was not accessible. 16 kms. pathway had been damaged and even walking was not possible. If we permit the roadway to be repaired, there is apprehension of damage to the land in the locality. If the work is left to the legal representatives of the ex-mine-owner they are likely to collect material for the purpose of repair which would definetely affect the ecology. Yet there are valuable machines apart from the mined material to be collected. We leave it to the Collector and the Monitoring Committee to find out if by some convenient path or any other process by which the machinery and the mined material can be moved out. The legal representatives of the ex-mine-owner may now contact the Collector and the Monitoring Committee to find out the modality of removal and in case some convenient way is found out the stacked material and the machinery may be removed with the help of the agency of the Collector subject to the payment of the cost on or before 15th June, 1990.

C.M.P. No. 18702 of 1989

16. This application is by the ex lessee of lease No. 31. The joint inspection report indicates that the mining was stopped on 12th March, 1985 and there has been no fresh quarrying. The report indicates:

> "Under the mining faces in the slopes and in the river beds scree and fine material were seen lying and scattered. Natural vegetation is overgrown. Plants like.... were growing. At some spots pine plants and furns were also found growing indicating that there is existance of humus and the already quarried material has compacted and settled binding the soil."

17. In this view of the matter it becomes difficult to entertain this petition at this stage; the petition is accordingly dismissed.

I.A. No. 4 of 1989

18. This application is by the ex-lessee of mine No. 17 asking for permission for removal of already extracted mineral lying at the mine site. In the joint inspection report it has been indicated that this Court had granted some time for removal. The ex-lessee had also obtained an order from the Addl. District Judge of Dehradun. The report indicated that there was no sign of fresh mining. We have taken all aspects into account and we are of the view that this application has to be rejected.

C.M.P. No. 18703 of 1989

19. This application is on behalf of the ex-lessee of lease No. 8 for extension of time for lifting of mined mineral. The joint inspection report indicates that mining in this area was stopped as early as 12th March, 1985, and "natural vegetation has overgrown in and around the mining faces. Considerable quarried material was lying scattered in the slopes, the quantity of which could not be ascertained or measured. The Monitoring Committee in its report dated 10.8.89 assessed that approximately 7,000 metric tons of the mining material was lying scattered in the mining area." We have no intention to permit any meddling to unsettle the settled situation. As the mining has stopped for more than five years and the report is that there has been over-growth of natural vegetation we do not intend to permit extension of time as prayed for. The petition is accordingly dismissed.

C.M.P. 11756 OF 1988

20. The two writ petition Nos. 9209 and 8821 of 1983 clearly relate to the Doon Valley and mining activity falling within the district of Tehri-Garhwal was not be the subject-matter of those two writ petitions. The CMP filed by the State of Uttar Pradesh is dismissed leaving it open to the State to agitate its contentions in regard to mining activity in Tehri-Garhwal separately.

W.P. No. 151 OF 1990.

21. This is an application under Art. 32 of the Constitution asking for grant of leases in respect of five mines falling within the 'A' category of the Bhargava Committee Report as also Category (1) of the Working Group Report to the Calcium Carbonate Manufacturers Association for carrying out limited mining activity to meet the essential and captive need of the Calcium Carbonate Industry. When the main writ petitions were pending, CMP 30707/87 had been filed for the self-same relief and it wanted to be impleaded in those two writ petitions. The application was rejected on 30th of August, 1988, by saying :

> "From time to time Civil Miscellaneous Petitions had been moved and orders were made. We do not see any justification to make any further order in such cases. All CMPs are disposed of."

Thereafter, the petitioner made another application for the same relief but the Registry did not entertain it in view of the final order of 30th August, 1988. The present writ petition, in these circumstances, is not maintainable. That apart, this Court had come to the conclusion on 30th of August, 1988, that mining activity in the Doon Valley area must ultimately stop. The Court has taken into consideration the need for availability of minimum supply of the mineral in question and to make available such supply, controlled and regulated mining activity has been permitted. Mining leases are not granted by this Court and in view of the conclusion already reached that no fresh mining activity should be carried on, we see no justification for entertaining this writ petition.

CONTEMPT PETITION NO. 25 OF 1989

22. There is already an order that the proceeding for contempt is misconceived. We do not find any justification to give any further time for lifting or removal. The contempt petition is accordingly dismissed.

I.A. NO. 9 OF 1989

23. This application is by the Monitoring Committee appointed by this Court and the prayer is to recall the order of 19th October, 1989, and to direct the State of Uttar Pradesh to sell the material and utilise the proceeds for the purposes of reafforestation and conservation. In view of the steps we have taken in the connected matters, no particular directions are necessary.

C

24. The only other question that is left for consideration is the recommendation of the Monitoring Committee that the payment of Rs. 5 per metric ton of the extracted material fixed by this Court in 1988 should be raised to Rs. 20/- per metric ton. We have heard counsel for the parties. We have also perused the report and the papers produced on behalf of the lessees who are still running. We are inclined, on the materials placed, to take the view that the rate should be enhanced to Rs. 10/- from Rs. 5/- with effect from 1st June, 1990. Since this will not have any retrospective effect the liability for such payment would be only in respect of the lessees who are running by permission of the Court given in the main judgment of August 30, 1988.

25. It has been contended by some of the lessees before us that the money which has been collected on the basis of Rs. 5/- per metric ton has not yet been utilised for plantation. We hope and trust that there is no basis for the criticism but would like to advise the Monitoring Committee to activise its steps in the proper direction.

26. A detailed report on the afforestation scheme may now be placed by the Monitoring Committee by 30th June, 1990, for the consideration of the Court on the 23rd July, 1990.

27. The rehabilitation scheme which has already been furnished by the appropriate Committee should now be placed before the Court for orders also on 23rd July, 1990.

SCALE (PIL) 1981-97 1632

RADHAKANTAPUR LEPROSY ASSOCIATION *Petitioner*

VS

SRI D.K. BARAI & ANOTHER *Respondents*

CORAM: SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.

PUBLIC INTEREST LITIGATION — PHYSICALLY HANDICAPPED — RESERVATION FOR PHYSICALLY HANDICAPPED PERSONS — Rights of Physically handicapped persons to employment in public service — Court issues certain directions.

1. It is clarified that the respondent South Eastern Railway in making employment for the employees in Group(C) & (D) Posts Services earmarked for the physically handicapped persons will follow the directions contained in the letter dated 8th January, 1978 which is at page 39 of the Paper Book. The appointments will be made of the ex-leprosy patients if they are medically found fit and are able to perform the work required of them. It is also clarified that if persons who are blind, may be so considered for absorption in the category of blinds, if however, there are not sufficient number of blind persons but if they are deaf then they may be considered for absorption in that category and similarly if there are no sufficient number of deaf then these may be considered for absorption of the orthopaedically handicapped persons as mentioned in the said letter. These appointments with the other eligible candidates should be made within three months from today. This order will be effected not only for the present but in future also.

2. This Civil Miscellaneous Petition is disposed of by the other herein.

Order dated July 26, 1988 in C.M.P. No. 437 of 1988 (in C.A. No. 1749 of 1987). [1990(1) SCALE (SUPP.) 126]

RADHAKANTAPUR LEPROSY ASSOCIATION *Petitioner*

VS

D.K. BARAI & ANR. *Respondents*

CORAM: SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.

PUBLIC INTEREST LITIGATION — PHYSICALLY HANDICAPPED — RESERVATION FOR PHYSICALLY HANDICAPPED PERSONS — Rights of Physically handicapped persons to employment in public service — Court issues certain directions.

C.M.P. NO. 25269/1988

1. It is directed that those who are physically handicapped should be recruited in accordance with the procedure laid down by the notification of the Government which are Annexures 'J' and 'K' of this Civil Misc. Petition. The Selection Committee before making selection may verify the certificate given in favour of the individual persons certifying that they are entitled to be recruited in accordance with these notifications. For such verification, if and when, occasion arises and if the Selection Committee so considers in appropriate cases may call up the persons for personal verification or interview. For the posts for which the physically handicapped persons are eligible and they apply, should be recruited in future, in accordance with this procedure. If any individual is aggrieved that the procedure is not correctly followed he will be at liberty to make representation to the appropriate authority viz. the Chief Personnel Officer of the respective Railways. In case his/her grievance is still not met then the individual person would be at liberty to take appropriate legal proceedings in accordance with law. In making such selection if there are any other allied notifications apart from Annexures 'J' and 'K' which according to the person concerned have not been adhered to in making the selection they will be at liberty to draw the attention of the appropriate authorities to those notifications and the authorities will take into consideration those allied notifications issued by the Government. With these directions the Civil Miscellaneous Petition is disposed of. No further directions are necessary.

C.M.P. No. 10879/1988

2. So far as Sri Sarat Chandra Nayak mentioned at page 41 of the paper-book is concerned, who is the applicant in the C.M.P., he will be admitted in accordance with the procedure indicated in Annexure 'G' being letter of the Directorate General of Health Services, New Delhi, dated 4th December, 1984. Accordingly, he should be given admission if he fulfils other conditions and requirements for training in the Para-Medical Workers Training Course. This order will be effective provided there is no other direction or letter issued by the Directorate General of Health Services, New Delhi, in modification or alteration of the aforesaid letter dated 4th December, 1984 until and unless such direction made at page 46 of the paper-book is modified, revoked or cancelled. These directions so far as Shri Sarat Chandra Nayak is concerned, will also apply in appropriate cases to others sponsored by Radhakantapur Leprosy Association, Orissa, for training in the Para-Medical Workers Training Course.

3. With these directions the Civil Misc. Petition is disposed of.

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rder dated January 6, 1989 in C.M.P. No. 25269 of 1988 and C.M.P. No. 10879 of 1988 in (C.A. No. 49 of 1987) (S.C. Nayak v R.L.T.R.I.) [1990 (1) SCALE (SUPP.) 127]

SCALE (PIL) 1981-97 1634

PT. PARMANAND KATARA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA, KULDIP SINGH AND P.B. SAWANT, JJ.

PUBLIC INTEREST LITIGATION — MOTOR VEHICLES — MOTOR VEHICLES ACT — CONSTITUTION — ARTICLE 21 — No fault liability — Disposing of the writ petition Court was of the view that taking into consideration the compensation provided when such death takes place while travelling by railway or by air, the amount of Rs. 25,000/- provided for 'no fault liability' in the Motor Vehicles Act should be enhanced.

1. This is an application under Article 32 of the Constitution and is a public interest litigation. The sole prayer made to this Court in this petition is that a basic minimum compensation commensurates to the meaning of life in Article 21 of the Constitution should be provided in respect of Motor accidents when death takes place. Under the Motor Vehicles Act 'no fault liability' has been fixed at Rs. 25,000/-. We are of the view that taking into consideration the compensation provided when such death takes place while travelling by railway or by air, the amount of Rs. 25,000/- provided for 'no fault liability' in the Motor Vehicles Act should be enhanced. We commend that early steps may be taken in this regard. The writ petition is disposed of accordingly.

Order dated April 16, 1990 in W.P. No. 1354 of 1989. [1990(1) SCALE (SUPP.) 130]

SCALE (PIL) 1981-97 1634

COMMON CAUSE A. REGD. SOCIETY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — CONSUMER PROTECTION ACT — Consumer State Commission and District Forums — Setting up of — Non-compliance of this Courts order — Court issues further directions.

1. We find that the Petitioner has impleaded nine States only though relief asked for is a common one and would be applicable against every State and Union Territory of India. The question as to why the other States have been left out in response to our question, petitioner makes an oral prayer that all other States and the Union territories' be impleaded. We accept the request. Issue notice to them.

2. The Act came into force in December 1986 and though about three years are going to expire steps envisaged under the Act have not been taken. The Act was intended by Parliament as a beneficial measure to the common consumer and to protect his interest. The fact that three years have gone and the State Commission and the District Forum have not been made available to be utilised by the aggrieved consumer does not speak well. So far as the erring States and Union Territories are concerned, without waiting to

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Order dated January 11, 1989 in W.P (C) No. 1141 of 1988. [1990(1) SCALE (SUPP.) 131] hear them we think it appropriate to issue a direction that every State and Union Territory shall constitute the District Forum as required under section 9(a) and the State Commission under section 9(b) of the Act within six weeks from today. This order shall be sent by telex to every Chief Secretary of the States and the Union Territories in course of the day by the Registry. Everyone bound by the order is directed to file an affidavit of compliance within two weeks of the expiry of six weeks. This matter shall appear again on expiry of the eight weeks from today for further orders.

3. The National Consumers Disputes Redressal Commission shall also be impleaded as a party and notice shall be issued to it for appearance in Court.

SCALE (PIL) 1981-97 1635

COMMON CAUSE (A REGD. SOCIETY) *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: G.L. OZA AND A.M. AHMADI, JJ.

PUBLIC INTEREST LITIGATION — CONSUMER PROTECTION — CONSUMER PROTECTION ACT — Consumer State Commission and District Forums — Setting up of — Non-compliance of this Courts Order — Court issues further directions.

1. The affidavit filed in the Court today on behalf of the Government of India indicates that the compliance has not been done of the order of this Court by all the states. Although it is, directed that by 31st December, 1989, all the states whose compliance has not been done, shall complete the compliance of this Court's Order passed earlier. At least the State Government should complete what they are expected to do by that time and file their affidavits by the Ist week of January, 1990. Let the case be listed on January, 17, 1990 before a bench of which Hon'ble Mr. Justice Ranganath Misra is a member.

Order dated November 15, 1989 W.P. (C) No. 1141/88. [1990(1) SCALE (SUPP.) 132]

SCALE (PIL) 1981-97 1635

SARAT CHANDRA NAYAK AND ORS. *Appellants*

VS

K.V. KRISHNAMURTHY *Respondent*

CORAM: SABYASACHI MUKHARJI AND S. RANGANATHAN. JJ.

PUBLIC INTEREST LITIGATION — PHYSICALLY HANDICAPPED — RESERVATION FOR PHYSICALLY HANDICAPPED PERSONS — Rights of the physically handicapped and those who have suffered from leprosy to employment — Court issues certain directions.

Order dated July 24, 1989 in C.M.P. No. 5959-60 and 7798 in (C.A. No. 1749/87). [1990(1) SCALE SUPP.) 132]

1. The petitioners who have applied to the South Eastern Railways should be considered for appointment in accordance with the Notification dated 8th January, 1978 as well as in accordance with the directions contained in the Circular dated 25th June, 1980. Vacancies should be filled in after taking into consideration the applications by the handicapped persons in accordance with these directions. This is in continuation of the directions already given by this court by its orders dated 26th July, 1988 and 6th January, 1989. These directions will be applicable only in respect of the vacancies to be filled up hereafter.

CMP NOS.5959-60 of 1989

2. These matters are adjourned to 2nd August, 1989.

SCALE (PIL) 1981-97 1636
SURENDER KUMAR LENKA & ORS. P.C. JAINA *Petitioners*
VS
K.V. KRISHNAMURTHY AND HARISH CHANDRA MISRA *Respondents*
CORAM: SABYASACHI MUKHARJI, KULDIP SINGH, JJ.

PUBLIC INTEREST LITIGATION — PHYSICALLY HANDICAPPED — RESERVATION FOR PHYSICALLY HANDICAPPED PERSONS — Rights of the physically handicapped and those who have suffered from leprosy to employment — Court issues certain directions.

CMP. No. 5959-60/89:

1. Sarat Chandra Nayak and others similarly situated applicants should be admitted to the Para-Medical Workers Training Courses at the Regional Leprosy Training and Research Institute, Aska which are scheduled to be started from September 1, 1989 as per orders of this court dated January 6, 1989. The order should be complied forthwith.

CONTEMPT PETITION NO. 44/89:

2. The matter is adjourned for three weeks.

Order dated August 28, 1989 in CMP No. 5959-60/89 CIM CA 17. [1990(1) SCALE (SUPP.) 133]

SCALE (PIL) 1981-97 1636
P.C. JAIN AND ORS. SURENDER KUMAR LENKA & ORS. *Petitioners*
VS
K.V. KRISHNAMURTHY, HARISH CHANDRA MISRA *Respondents*
CORAM: SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.

PUBLIC INTEREST LITIGATION — PHYSICALLY HANDICAPPED — RESERVATION FOR PHYSICALLY HANDICAPPED PERSONS — Rights of the physically handicapped and those who have suffered from leprosy to employment — Court issues certain directions.

1. Issue notice returnable on 4.10.89 Dr. K.V. Krishnamurthy and P. Murugan are directed to be remain present on that date.

2. In class C and D posts in the South

Order dated September 18, 1989 in C.M.P. No. 5959-60/89 (in C.A. No. 1749/87) with C.P. No. 44/89. 7789/89). [1990(1) SCALE (SUPP.) 133]

Eastern Railway pending vacancies will not be filled up without absorbing the applicant until further orders.

CONTEMPT PETITION NO. 44/89

3. List the matter on 5.10.89. In the meantime no appointments will be made.

SCALE (PIL) 1981-97 1637

LAXMIKANT PANDEY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA, M.M. PUNCHHI AND S.C. AGRAWAL, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — ADOPTION TO FOREIGN PARENTS — Non compliance with directions issued — Further directions given.

1. Chief Secretary, State of Karnataka, makes his appearance today as directed. Counsel on his behalf states that compliance report is being filed in Court today. The appearance of the Chief Secretary is dispensed with.

2. Mr. Poti appears for the Chief Secretary of the State of Kerala and says that the compliance has been carried out. Affidavit of compliance shall be filed on Monday the 12th instant as undertaken by him.

3. Law Secretary of the State of Madhya Pradesh enters appearance through counsel and says that there has been total compliance of the directions of this Court and affidavit is filed. The appearance of the Law Secretary is dispensed with.

4. The time in respect of the State of Manipur is extended by two weeks as election to the State Assembly is taking place on the 12th of this month. The affidavit of compliance shall be filed as undertaken by counsel on or before 23.2.90.

5. Four weeks' time is allowed to the High Court of Allahabad to frame its rules and to report due compliance of the directions contained in the judgment. Mrs. Dikshit appearing for the Joint Registrar, to whom notice was issued, undertakes to do so by 9.3.1990.

6. When the matter was called the States of Andhra Pradesh, Bihar, Haryana, Jammu & Kashmir, Maharashtra, Orissa, Punjab, Rajasthan, Delhi Administration, Chandigarh and the State of Gujarat did not respond. The Registry shall put-up a note on Tuesday the 20th instant as to whether notices have been served on them so as to enable the Court to take further action for enforcement of the directions of this Court in the judgment. Standing counsel, if any, of the defaulting States may be notified to remain present on the 20th instant.

Order dated February 9, 1990 in Crl. M.P. No. 3357 in W.P. Crl. No. 1171 of 1982. [1990(1) SCALE (SUPP.) 133]

SCALE (PIL) 1981-97 1637

LAXMIKANT PANDEY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA, M.M. PUNCHHI AND K. RAMASWAMY, JJ.

Order dated March 1, 1990 in Crl. M.P. No. 784/90 in W.P. (Crl.) No. 1171/82. [1990(1) SCALE (SUPP.) 134]

PUBLIC INTEREST LITIGATION — ADOPTION — ADOPTION TO FOREIGN PARENTS — Non compliance with directions issued — Further directions given.

1. Counsel states that in view of the Full Bench decision of the Madras High Court in Mrs. Mary Thomas v. Dr. K.E. Thomas (O.S. Appeal No. 21 of 1989) dated 3.11.89, the Madras High Court has jurisdiction to deal with the adoption matters. Specific reference of three cases has been given now. Two of these matters are pending before the High Court for about ½ year and the third matter for about 10 months. It is, however, stated that 50 such cases are pending for about 6 months. We suggest that the learned Chief Justice shall assign this application to appropriate Bench of the High Court for expeditious disposal preferably within 2 months from today as indicated in the reported decision being AIR. 1986 SC 272 Lakshmi Kant Pandey vs. Union of India.

SCALE (PIL) 1981-97 1638

L.K. PANDEY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA AND M.M. PUNCHHI, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — ADOPTION TO FOREIGN PARENTS — Non-compliance with directions issued — Delay by Juvenile Magistrate at Calcutta in disposing of proceedings pending before him — Court issues directions.

1. A petition has been filed on behalf of the Society for Indian Children's Welfare Organisation making allegations, *inter alia,* that the Juvenile Magistrate at Calcutta has not disposed of the proceedings before him in regard to certain children being declared as abandoned and free for placement for adoption inspite of the fact that more than 15 months have elapsed since the applications were made to him. Reliance is placed on a part of the judgment in Laxmi Kant Pandey vs. Union of India (AIR 1987 SC 232) at page 240 where this Court said :

> "Meanwhile, the social or child welfare agency which has found the abandoned or destitude child may make an application to the Juvenile Court or to the Social Welfare Department or the Collector, as the case may be, for a release order declaring that the child is legally free for adoption and since the report of the inquiry to be made by the police has under this direction to be completed within one month, it should be possible for the Juvenile Court or the Social Welfare Department or the Collector to make a release order declaring the child legally free for adoption within a period of *five weeks* from the date of making the application."

2. We have been told that in regard to three children being Margina, Ramola and Mina, applications had been filed on 1.12.1988, 14.1.1989 and 2.3.1989 respectively. Obviously there is no compliance with the directions of this Court extracted above. We have not thought it appropriate to issue a notice to the Magistrate

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Order dated April 12, 1990 in Cr.M.P. No. 1740/90 in W.P. (Crl.) No. 1171/82. [1990(1) SCALE (SUPP.) 134] of the Juvenile Court to have his explanation at this stage. We direct that the Magistrate shall dispose of the cases within four weeks from the date of receipt of this order by him and this order be communicated to him in course of the day.

3. A report of compliance shall be furnished to the Registry. The Magistrate shall offer his explanation along with the report of compliance as to why he has not disposed of these applications inspite of the directions contained in the reported decision.

4. The Magistrate shall take into consideration the fact that the children referred to above have been till now living in the licensed home of the petitioner-Society and, therefore, unless there be any particular justification to shift these children to any Government-runhome, they may be permitted to continue at the present place.

SCALE (PIL) 1981-97 1639

LAXMIKANT PANDEY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA, KULDIP SINGH AND R.M. SAHAI, JJ.

PUBLIC INTEREST LITIGATION — ADOPTION — ADOPTION TO FOREIGN PARENTS — Non-compliance with directions issued — Court issues notice to show cause why contempt action shall not be initiated — Court also directs the matter to come up on 12.7.90 for necessary directions in view of Family Courts Act and Juvenile Justice Act having come into existence.

Jammu & Kashmir : Mr. S.K. Bhattacharya appearing for the State of J & K states that the counter affidavit has been received and shall be presented today in the Registry.

Meghalaya : Mr. D.N. Mukharjee appearing for the State of Meghalaya says that the affidavit shall be filed on or before 30.4.1990.

Mizoram. Arunachal Pradesh. Andaman & Nicobar Islands, Lakshadweep & West Bengal Dadra & Nagar Haveli & Daman & Diu : There is no appearance when the matter is called. We take it that the above seven have not complied with the order.

Goa: The Office report indicates that the affidavit has already been filed and though there is no appearance by Ms. Subhashini, the affidavit is taken on record and she is directed to file her appearance within ten days.

2. In respect of the defaulting States, where there is no appearance, notices be issued to the Welfare Secretary and to appear in person on 2.5.1990 to show cause as to why contempt action shall not be initiated against him. Requirement of personal appearance shall be indicated.

3. A petition has been filed by Mr. Ramamurthi, Senior Counsel, bringing to the notice of the Court on behalf of the All India Lawyers Union, Tamilnadu Unit, Madras that when the main judgment was pronounced by this Court in 1984 the statutory law in the field which this Court's judgment kept in view for laying down the procedure was the

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Order dated April 20, 1990 in Crl. M.P. No. 3357, 783, 1712, 1713/89. In W.P. (Crl.) No. 1171/82. [1990(1) SCALE (SUPP.) 135]

Guardians & Wards Act along with the Children's Act and the various State laws. In the meantime, the Family Courts Act as also the Juvenile Justice Act have come into the field and according to his submissions the legal position as formulated in the main judgment would require suitable touching up with reference to these later Acts. We find force in what he says. The petitioner, Mr. Laxmi Kant Pandey, also supports the stand of Mr. Ramamurthi but states that the matter involves serious attention and application of mind and, therefore, all parties should be heard.

4. We direct that this aspect of the matter shall be heard by the Court on 12.7.1990 when counsel for the Union of India in the relevant Ministry and such of the States which would like to be heard should address their submissions.

5. Registry shall ensure that copies of the application of Mr. Ramamurthi's client are furnished to the Standing Counsel of every State.

SCALE (PIL) 1981-97 1640

PRABHASH CHANDRA JENA & ORS. *Appellants*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: SABYASACHI MUKHARJI AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — PHYSICALLY HANDICAPPED — RESERVATION FOR PHYSICALLY HANDICAPPED PERSONS — Rights of persons suffering from leprosy and declared fit for public service — Disposing of the appeal Court issues directions.

1. Special leave granted.

2. Having considered the facts and circumstances of the case we are of the opinion that in the facts of this case it is necessary to direct that in case the petitioner or persons situated like the petitioner, i.e., those who were suffering from leprosy and have been declared fit for public service, if and when they apply their application should be treated keeping in view the Ministry of Home Affairs Notification dated 2.3.65 bearing No. 14-11/65- Estt., D. and in accordance with the law. The order of the High Court is substituted by the aforesaid order.

3. The appeal is disposed of with this direction.

Order dated August 17, 1987 in C.A. No. 1749 of 1987 in (S.L.P. (C) No. 12043 of 1986.) [1990(1) SCALE (SUPP.) 139]

SCALE (PIL) 1981-97 1640

PRABHASH CHANDRA JENA & ORS. *Appellant*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: M.M. PUNCHHI AND K. JAYACHANDRA REDDY, JJ.

Order dated January 15, 1990 in C.A. No. 1987 of 1989 with C.P. No. 44/89 (in C.A. No. 1749 of 1989). [1990(1) SCALE (SUPP.) 140]

PUBLIC INTEREST LITIGATION — PHYSICALLY HANDICAPPED — RESERVATION FOR PHYSICALLY HANDICAPPED PERSONS — Rights of persons suffering from leprosy and declared fit for public service — Disposing of the appeal Court issues directions.

1. There will be a meeting of 177 candidates involved in these applications on 12th February, 1990. The candidates will appear before the Chief Personnel Officer (Admn.) Kharagpur, to enable him to find out the suitability of the applicants for the appropriate jobs to which they are entitled to, to consider them in accordance with the Government notification mentioned earlier. The persons who are coming from outside Kharagapur will be provided Railway passes on their making applications. If necessary the respondents will have their appropriate officers. Administrators and medical examiners as will be necessary. This will be done as quickly as possible.

2. The presence of the Officer is dispensed with. He will be called only as and when directed.

3. List these application for hearing after eight weeks.

SCALE (PIL) 1981-97 1641

ANUKUL CHANDRA PRADHAN, ADVOCATE, SUPREME COURT *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA CJI, SUJATA V. MANOHAR AND B.N. KIRPAL, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 14, 21 — REPRESENTATION OF THE PEOPLE ACT, 1951 — S. 62(5) — Validity of — Whether the denial of voting rights to undertrials and other persons detained in prison is discriminatory and violative of Articles 14 and 21 — Dismissing the petition, Held,

A. There are provisions made in the election law which exclude persons with criminal background of the kind specified therein, from the election scene as candidates and voters. The object is to prevent criminalisation of politics and maintain probity in elections. Any provision enacted with a view to promote this object must be welcome and upheld as subserving the constitutional purpose. The elbow room available to the legislature in classification depends on the context and the object for enactment of the provision. The existing conditions in which the law has to be applied cannot be ignored in adjudging its validity because it is relatable to the object sought to be achieved by the legislation. Criminalisation of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order which are the essence of democracy must, therefore, be so viewed. More elbow room to the legislature for classification has to be available to achieve the professed object. (Para 5).

B. The effect of sub-section (5) of Section 62 of the Act is that any person who is confined in prison while serving a sentence of imprisonment on his conviction for any offence or is under lawful confinement in a prison or in a police custody for any reason is not

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Judgment dated July 9, 1997 in W.P. (Crl.) No. 137 of 1996. [1997(4) SCALE 455] *entitled to vote in an election, but this restriction does not apply to a person subjected to any kind of preventive detention. (Para 6).*

C. There are other reasons justifying this classification. It is well known that for the conduct of free, fair and orderly elections, there is need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a much larger police force and much greater security arrangements in the conduct of elections. Apart from the resource crunch, the other constraints relating to availability of more police forces and infrastructure facilities are additional factors to justify the restrictions imposed by sub- section (5) of Section 62. A person who is in prison as a result of his own conduct and, is therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison. The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether he wants to go to vote or not; even he may choose not to go and cast his vote. In view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go and vote. Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable. (Para 8).

D. The right to vote is subject to the limitations imposed by the statute which can be exercised only in the manner provided by the statute; and that the challenge to any provision in the statute prescribing the nature of right to elect cannot be made with reference to a fundamental right in the Constitution. (Para 12).

Referred: N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and Others, [1952] S.C.R. 218 at 236; Jamuna Prasad Mukhariya and Others v. Lachhi Ram and Others, [1955] 1 S.C.R. 608 at 610; Jyoti Basu v. Debi Ghosal, (1982) 1 SCC 691 at 696.

Verma, CJI— By this petition under Article 32 of the Constitution challenge is made to the constitutional validity of sub-section (5) of Section 62 of the Representation of the People Act, 1951. Section 62 relates to right to vote and is as under:

> "62. Right to vote.— (1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.
>
> (2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (43 of 1950)
>
> (3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.
>
> (4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if the does so vote, all his votes in that constituency shall be void.
>
> (5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

> Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force."

2. Section 62 contains five sub-sections. Sub-section (1) says that every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency. Sub-section (2) debars a person from voting at the election if he is subject to any of the disqualifications referred to in Section 16 of the Representation of the People Act, 1950, which deals with disqualifications for registration in an electoral roll. Sub-section (3) forbids every person from voting in more than one constituency of the same class. Sub-section (4) forbids every person from voting in the same constituency more than once. Sub-section (5) debars a person to vote in an election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police. The proviso to Sub-section (5) carves out an exception for a person subjected to preventive detention under any law for the time being in force. Thus, a person confined in a prison under a sentence of imprisonment or otherwise or in the lawful custody of the police is debarred from voting at any election during the period of his confinement in the prison, but this bar does not apply to a person under preventive detention. We are concerned with the constitutional validity of sub-section (5).

3. The argument of Shri Rajinder Sachar, the learned counsel for the petitioner, is that sub-section (5) of Section 62 of the Act violates Articles 14 and 21 of the Constitution. The submission is that the expression "or otherwise" in sub-section (5) of Section 62 has a very wide connotation and denies voting right even to under-trials and other persons detained in a prison for any reason, including the reason of inability to furnish bail. He submitted that the restriction applies to a person in lawful custody of the police which would include a person detained during investigation before a chargesheet has been filed against him. On the other hand, a person convicted and sentenced to imprisonment but released on bail is permitted to vote. The learned counsel contended that this is discrimination and violates Article 14 of the Constitution. It was further contended by the learned counsel that there is violation also of Article 21 inasmuch as the restriction placed on the prisoner's right to vote by sub-section (5) of Section 62 of the Act denies dignity of life. In substance, the challenge to the constitutional validity of sub-section (5) of Section 62 is based primarily on Article 14 of the Constitution.

4. It is settled that Article 14 permits reasonable classification which has a rational nexus with the object of classification. The question is whether the classification made by sub-section (5) of Section 62 is reasonable or not.

5. There are provisions made in the election law which exclude persons with criminal background of the kind specified therein, from the election scene as candidates and voters. The object is to prevent criminalisation of politics and maintain probity in elections. Any provision enacted with a view to promote this object must be welcome and upheld as subserving the constitutional purpose. The elbow room available to the legislature in classification depends on the context and the object for enactment of the provision. The existing conditions in which the law has to be applied cannot be ignored in adjudging its validity because it is relatable to the object sought to be achieved by the legislation. Criminalisation of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order which are the essence of democracy must, therefore, be so viewed. More elbow room to the legislature for classification has to be available to achieve the professed object.

6. The effect of sub-section (5) of Section 62 of the Act is that any person who is confined in prison while serving a sentence of imprisonment on his conviction for any offence or is under lawful confinement in a prison or in a police custody for any reason is not entitled to vote in an election, but this restriction does not apply to a person subjected to any kind of preventive detention.

7. The learned counsel, Shri Sachar argues that persons in preventive detention cannot be classified separately. That by itself would not result in the invalidity of whole of sub-section (5), but can affect the validity only of the proviso therein. The challenge in the present case is not merely to the proviso, but to the whole of sub-section (5). This argument does not, therefore, advance the petitioner's case. However, for the purpose of the present challenge, it is sufficient to say that ~~preventive~~ detention differs from imprisonment on conviction or during investigation of the crime of an accused which permits separate classification of the detenus under preventive detention. Preventive detention is to prevent breach of law while imprisonment on conviction or during investigation is subsequent to the commission of the crime. This distinction permits separate classification of a person subjected to preventive detention.

8. There are other reasons justifying this classification. It is well known that for the conduct of free, fair and orderly elections, there is need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a much larger police force and much greater security arrangements in the conduct of elections. Apart from the resource crunch, the other constraints relating to availability of more police forces and infrastructure facilities are additional factors to justify the restrictions imposed by sub-section (5) of Section 62. A person who is in prison as a result of his own conduct and, is therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison. The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether he wants to go to vote or not; even he may choose not to go and cast his vote. In view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go and vote. Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable.

9. It may also be mentioned that the nature of right to vote has been held to be a statutory right and not a common law right because of which it depends on the nature of right conferred by the statute. In *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and Others,* [1952] S.C.R. 218 at 236, the Constitution Bench held:

> "The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it".

10. In *Jamuna Prasad Mukhariya and Others v. Lachhi Ram and Others*, [1955] 1 S.C.R. 608 at 610, the Constitution Bench reiterated:

> "The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute

> and can only be exercised on the conditions laid down by the statue. The Fundamental Rights Chapter has no bearing on a right like this created by statute...".

11. In *Jyoti Basu v. Debi Ghosal,* (1982) 1 SCC 691 at 696, the law on the point was restated, thus:

> "The nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the constitutional and statutory provisions in relation to these rights have been explained by the Court in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, [1952] S.C.R. 218 and Jagan Nath v. Jaswant Singh, [1954] S.C.R. 892.* We proceed to state what we have gleaned from what has been said, so much as necessary for this case.
>
> A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, creations they are, and therefore, subject to statutory limitation."

12. In view of the settled law on the point, it must be held that the right to vote is subject to the limitations imposed by the statute which can be exercised only in the manner provided by the statute; and that the challenge to any provision in the statute prescribing the nature of right to elect cannot be made with reference to a fundamental right in the Constitution. The very basis of challenge to the validity of sub-section (5) of Section 62 of the Act is, therefore, not available and this petition must fail.

13. Consequently, this petition is dismissed. No costs.

SCALE (PIL) 1981-97 1645

M.C. MEHTA *Petitioner*

VS

STATE OF TAMIL NADU AND OTHERS *Respondents*

CORAM: KULDIP SINGH, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 24 — Child Labour — After going through the report and the recommendations of the Committee which visited Sivakasi where the manufacture of match boxes in large scale take place and where child labour is employed, the Court, having regard to the various provisions prohibiting child labour and after referring to the various legislative enactments and the failure in totality in achieving the object of prohibiting child labour, gave directions to the States for taking the necessary steps for achieving the objects set by the Constitution.

Referred: Unni Krishnan, 1993-1 SCC 645.

Hansaria, J.—

"I am the child.
All the world waits for my coming.
All the earth watches with interest to see what I shall become.
Civilization hangs in the balance,
For what I am, the world of tomorrow will be.

I am the child.
You hold in your hand my destiny.

Judgment dated December 10, 1996 in W.P. (C) No. 465 of 1986 [1996(9) SCALE 42]

You determine, largely, whether I shall
succeed or fail,
Give me, I pray you, these things that make
for happiness.
Train me, I beg you, that I may be a blessing
to the world".
Mamie Gene Cole

It may be that the aforesaid appeal lies at the back of the saying that "child is the father of man". To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.

2. Our Constitution makers, wise and sagacious as they were, had known that India of their vision would not be a reality if the children of the country are not nurtured and educated. For this, their exploitation by different profit makers for their personal gain had to be first indicted. It is this need, which has found manifestation in Article 24, which is one of the two provisions in Part IV of our Constitution on the fundamental right against exploitation. The framers were aware that this prohibition alone would not permit the child to contribute its mite to the nation building work unless it receives at least basic education. Article 45 was therefore inserted in our paramount parchment casting a duty on the state to endeavour to provide free and compulsory education to children. (It is known that this provision in Part IV of our Constitution is, after the decision by a Constitution Bench of this Court in *Unni Krishnan,* 1993-1 SCC 645, has acquired the status of a fundamental right). Our Constitution contains some other provisions also to which we shall advert later, desiring that a child must be given opportunity and facility to develop in a healthy manner.

3. Despite the above, the stark reality is that in our country like many others, children are exploited lot. Child labour is a big problem and has remained intractable, even after about 50 years of our having become independent, despite various legislative enactments, to which we shall refer in detail subsequently, prohibiting employment of a child in a number of occupations and avocations.

3A. In our country, Sivakasi was once taken as the worst offender in the matter of violating prohibition of employing child labour. As the situation there had became intolerable, the public spirited lawyer, Shri M.C. Mehta, thought it necessary to invoke this court's power under Article 32, as after all the fundamental right of the children guaranteed by Article 24 was being grossly violated. He, therefore, filed this petition. It once come *(sic)* to be disposed of by an order of October 31, 1990 by noting that in Sivakasi, as on December 31, 1985, there were 221 registered match factories employing 27,338 workmen of whom 2941 were children. The Court then noted that the manufacturing process of matches and fireworks (for the manufacture of which also Sivakasi is a traditional centre) is hazardous, giving rise to accidents including fatal cases. So, keeping in view the provisions contained in Article 39(f) and 45 of the Constitution, it gave certain directions as to how the quality of life of children employed in the factories could be improved. The court also felt the need of constituting a committee to oversee the directions given.

4. Subsequently, suo moto cognizance was taken in the present case itself when news about an "unfortunate accident", in one of the Sivakasi cracker factories was published. At the direction of the Court, Tamilnadu Government filed a detailed counter stating, inter alia, that number of persons to die was 39. The Court gave certain directions regarding the payment of compensation and thought that an advocates committee should visit the area and make a comprehensive report relating to the various aspects of the matter, as mentioned in the order of August 14, 1991. The committee was to consist of (1) Shri R.K. Jain, a senior advocate; (2) Ms. Indira Jaising, another senior advocate; and (3) Shri KC Dua, Advocate.

5. The committee has done a commendable job. It submitted its report on 11.11.91 containing many recommendations, the summary of which is to be found at pages 24-25 of the report, reading as below:-

> (a) State of Tamilnadu should be directed to ensure that children are not employed in fire works factories.
>
> (b) The children employed in the match factories for packing purposes must work in a separate premises for packing.
>
> (c) Employers should not be permitted to take work from the children for more than six hours a day.
>
> (d) Proper transport facilities should be provided by the employers and State Govt. for travelling of the children from their homes to their work places and back.
>
> (e) Facilities for recreation, socialisation and education should be provided either in the factory or close to the factory.
>
> (f) Employers should make arrangements for providing basic diets for the children and in case they fail to do so, the Government may be directed to provide for basic diet - one meal a day programme of the State of Tamilnadu for school children may be extended to the child worker.
>
> (g) Piece-rate wages should be abolished and payment should be made on monthly basis. Wages should be commensurate to the work done by the children.
>
> (h) All the workers working in the industry, whether in registered factories or in unregistered factories, whether in cottage industry or on contract basis, should be brought under the Insurance Scheme.
>
> (i) Welfare Fund - For Sivakasi area, instead of present committee, a committee should be headed by a retired High Court Judge or a person of equal status with two social workers, who should be answerable either to this Hon'ble Court or to the High Court as may be directed by this Hon'ble Court. Employers should be directed to deposit Rs. 2/- per month per worker towards welfare fund and the State should be directed to give the matching contribution. The employers of all the industries, whether it is registered or unregistered, whether it is cottage industry or on contract basis, to deposit Rs. 2/- per month per worker.
>
> (j) A National Commission for children's welfare should be set up to prepare a scheme for child labour abolition in a phased manner. Such a Commission should be answerable to this Hon'ble Court directly and should report to this Hon'ble Court at periodical intervals about the progress.

6. We put on record our appreciation for the commendable work done by the committee.

7. There is an affidavit of the President of the All India Chamber of Match Industries, Sivakasi, on record which contains its reaction to the recommendations of Committee. It is not necessary to deal with this affidavit. Objection to the Committee's recommendations was also filed by the President of Tamilnadu Fireworks and Amorces Manufactures Association. We do not propose to traverse this affidavit as well. Both of these contain general statements and denial of what was found by the Committee.

8. For the sake of completeness, it may be stated that there are on record various reports relating to working conditions etc. of child labour at Sivakasi. First of these reports is of a Committee which had been constituted by the Labour Department by the Tamilnadu Government vide its GO MS. dated 19.3.84, under the Chairmanship of Thiru N Haribhaskar. The report of the Committee is voluminous, as it runs into 181 pages and contains a number of annexures. The Committee reviewed the working conditions and measures taken to mitigate the sufferings of the child labour and has made various recommendations in Chapter XI of its report. We also have a work of Collector of Kamarajar District titled "Integrated Project for the Betterment of Living Conditions of Women and Children Employed in Match Factories in Sivakasi area." This work is of October 1985. There is yet another report dealing with the causes and circumstances of the fire explosions which had taken place on 12.7.91 at Dawan Amorces Fireworks Industries and it contains remedial measures. The final report relating to Sivakasi workers is of 30th March, 1993 this relates to elimination of child labour in the match and firework industries in Tamilnadu. The representatives of the Department of Labour & Employment, Social Welfare and Education had prepared this report in collaboration with UNICEF and it speaks of "A proposed strategy framework."

9. The Government of India as well has been apprising itself about the various aspects relating to child labour in various industries. A 16 member committee had come to be set up by a resolution of the Labour Ministry dated 6/7 February, 1979 under the chairmanship of Shri M.S. Gurupadaswamy. The Committee submitted its report on 29.12.79 and made various recommendations which are contained in Chapter V The labour Ministry, had subsequently surveyed the problem of child labour departmentally as a part of the observance of International Child Year Programme. The report (date 24.6.81) mentions about the survey conducted in certain organised and unorganised sector of industries. It contains an account of employment, wages nd earnings, working conditions and welfare activities relating to child labour both in organised and unorganised sectors. Chapter III of the report contains the conclusions, of which what has been stated in para 4.5 deserves to be noted. The same is as below:-

> Extreme poverty, lack of opportunity for gainful employment and intermittancy of income and low standards of living are the main reasons for the wide prevalence of child labour. Though it is possible to identify child labour in the organised sector, which form a minuscule of the total child labour, the problem relates mainly to the unorganised sector where utmost attention needs to be paid. The problem is universal but in our case it is more crucial.

Magnitude of the problem

10. Sivakasi has ceased to be the only centre employing child labour. The malady is no longer confined to that place.

11. A write-up in Indian Express of 25.10.1996 has described Bhavnagar as another Sivakasi in making, as that town of about 4 lakh population has at least 13,000 children employed in 300 different industries. The problem of child labour in India has indeed spread its fang far and wide. This would be apparent from the chart which finds place in the commendable work of a social authropologist of United Nations Volunteer, Neera Burra, published under the title "Born to Work : Child Labour in India", as at pages XXII to XXIV of the book. It is useful to extract that chart. It is as below:-

(List not attached)

12. According to the 1972 census 4.66 per cent of the child population in India consisted of working children. In absolute numbers, the 1971 census put the figure at 10.7 million working children. On the basis of National Sample Survey 27th round (1972-73) the number of working children as on March, 1973 in the age group of 5-14 years' may be estimated at 16.3 million and based on the 32 round at 16.25 million on 1st March, 1978 (14.68 million rural and 1.57 million urban). According to 1981 census the figure has gone to 11.16 million working children. As estimated by the Planning Commission on 1st March, 1983, there would be 15.70 million child labourers, (14.03 rural and 1.67 urban) in the age group of 10-14 years' and 17.36 million in the age group of 5-14 years'. The National Sample Survey Organisation estimates the number at 17.58 million in 1985. None of the official estimates included child workers in the unorganised sector, and therefore, are obviously gross under estimates. Estimates from various non-governmental sources as to the actual number working children range from 44 million to 100 million.

(Figures of 1981 census have been quoted because the report relating to 1991 census has not yet been made public. It is understood that the same is under publication).

13. The aforesaid profile shows that child labour by now is an all-India evil, though its acuteness differs from area to area. So, without a concerted effort, both of the Central Government and various State Governments, this ignominy would not get wiped out. We have, therefore, thought it fit to travel beyond the confines of Sivakasi to which place this petition initially related. In our view, it would be more appropriate to deal with the issue in wider spectrum and broader perspective taking it as a national problem and not appertaining to any one region of the country. we would address ourselves as to how we can, and are required to, tackle the problem of child labour, solution of which is necessary to build a better India.

Constitution call

14. To accomplish the aforesaid task, we have first to note the constitutional mandate and call on the subject, which are contained in the following articles:

> "24. Prohibition of employment of children in factories, etc. - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
>
> 39(e). that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
>
> 39(f). that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
>
> 41. Right to work, to education and to public assistance in certain cases- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
>
> 45. Provision for free and compulsory education for children- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.
>
> 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people

> and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

15. Of the aforesaid provisions, the one finding place in Article 24 has been a fundamental right ever since 28th January, 1950. Article 45 too has been raised to high pedestal by *Unni Krishnan*, which was decided on 4th February, 1993. Though other articles are part of directive principles, there are fundamental in the governance of our country and it is the duty of all the organs of the State (a la Article 37) to apply these principles. Judiciary, being also one of the three principal organs of the State, has to keep the same in mind when called upon to decide matters of great public importance. Abolition of child labour is definitely a matter of great public concern and significance.

International commitment

16. It would be apposite to apprise ourselves also about our commitment to world community. For the case at hand it would be enough to note that India has accepted the Convention on the Rights of the Child, which was concluded by the UN General Assembly on 20th November, 1989. This Convention affirms that children's right requires special protection and it aims, not only to provide such protection, but also to ensure the continuous improvement in the situation of children all over the world, as well as their development and education in conditions of peace and security. Thus, the Convention not only protects the child's civil and political right, but also extends protection to child's economic, social, cultural and humanitarian rights.

17. The Government of India deposited its instrument of accession to the above-mentioned conventions on December 11, 1992 with the United Nation's Secretary-General. That instrument contains the following declaration :

> "While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of the child, namely, those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; nothing that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India-the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party."

18. Article 32 of which mention has been made in the instrument of accession reads as below:

> "1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral o
> social development.
>
> 2. States Parties shall take legislati
> administrative, social and educatio

measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforce-ment of the present article."

Statutory provisions

19. We may now note as to how the problem of child labour has been viewed by our policy makers and what efforts have been made to take care of this evil. We have shown our concern in this sphere ever since the International Labour Organisation, set up in 1919 under the League of Nations, had felt that there should be international guidelines by which the employment of children under a certain age could be regulated in industrial undertakings. It, therefore, suggested that the minimum age of work be 12 years. The same required ratification by the Government of British India; and during the Legislative Assembly debates, the question of raising the minimum age from 9 to 12 years had created a furore. The Hon'ble Sir Thomas Holland had said in the Legislative Assembly in February 1921 that if the minimum age were raised, the same would upset the organisational set-up of most textile mills which were the principal employees of children. On the other hand, there were those who felt that the answer to the problem lay in compulsory primary education. The House ultimately was divided with 32 members voting for raising the minimum age to 12 and 40 voting against it. The Assembly, therefore, recommended to the Governor-General-in-Council that the Draft Convention should be ratified with certain observations.

20. May it be stated that the International Labour Organisation has been playing an important role in the process of gradual elimination of child labour and to protect child from industrial exploitation. It has focussed five main issues :-

1. Prohibition of children labour.
2. Protecting child labour at work.
3. Attacking the basic causes of child labour.
4. Helping children to adopt to future work.
5. Protecting the children of working parents.

Till now 18 Conventions and 16 recommendations have been adopted by the ILO in the interest of working children all over the world.

21. To continue our narration of steps taken here, a Royal Commission on Labour came to be established in 1929 to inquire into various matters relating to labour in this country. The report came to be finalised in 1931. It brought to light many inequities and shocking conditions under which children worked. The Commission had examined the conditions of child labour in different industries and had found that children had been obliged to work any number of hours per day as required by their masters. It was also found that they were subject to corporal punishment. The Commission had felt great concern at the placing of children by parents to employers in return for small sums of money; and as this system was found to be indefensible it recommended that any bond placing a child should be regarded as void.

22. The recommendations of the Commission came to be discussed in the Legislative Assembly and the Children (pledging of Labour) Act, 1933 came to be passed, which may be said to be the first statutory enactment dealing with child labour. Many statutes came to be passed thereafter. As on today, the following legislative enactments are in force prohibiting employment of child labours in different occupations:

(i) Section 67 of Factories Act, 1948:

"Prohibition of employment of young children- No child who has not completed his fourteenth year shall be required or allowed to work in any factory."

(ii) Section 24 of Plantation Labour Act, 1951:

"No child who has not completed his twelfth year shall be required or allowed to work in any plantation".

(iii) Section 109 of Merchant Shipping Act, 1951:

"No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except-

(a) in a school ship, or training ship, in accordance with the prescribed conditions; or

(b) in a ship in which all persons employed are members of one family; or

(c) in a home-trade ship of less than two hundred tons gross; or

(d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative."

(iv) Section 45 of Mines Act, 1952:-

(1) "No child shall be employed in any mine, nor shall any child be allowed to be present in any part of a mine which is below ground or in any (open cast working) in which any mining operation is being carried on.

(2) After such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no child shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on,

(v) Section 21 of Motor Transport Workers Act, 1961:-

"No child shall be required or allowed to work in any capacity in any motor transport undertaking."

(vi) Section 3 of Apprentices Act, 1961:-

Qualifications for being engaged as an apprentice:- A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-

(a) is not less than fourteen years of age, and

(b) satisfies such standards of education and physical fitness as may be prescribed:

Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices..

(vii) Section 24 of Beedi and Cigar Workers (Conditions of Employment Act, 1966:

"Prohibition of employment of children- No child shall be required or allowed to work in any industrial premises."

(viii) Child Labour (Prohibition and Regulation) Act, 1986. (Act 61 of 1986).

(ix) Shops and Commercial Establishment Acts under different nomenclatures in various States.

23. The aforesaid shows that the legislature has strongly desired prohibition of child labour. Act 61 of 1986 is, ex facie, a bold step. The provisions of this Act, other than Part III, came into force at once and for Part III to come into force, a notification by the Central Government is visualised by section 1(3), which notification covering all classes of establishments throughout the territory of India was issued on May 26, 1993.

24. Section 3 of this Act has prohibited employment of children in certain occupations and process. Part A of the Schedule to the Act contains the names of the occupations in which no child can be employed or permitted to work; and in Para B names of some processes have been mentioned in which no child can be employed or permitted to work. It would be profitable to quote Parts A and B of the Schedule which read as below:

Part A

Occupations

Any occupation connected with -

(1) transport of passengers, goods or mails by railway;

(2) cinder picking, clearing of an ash pit or building operation in the railway premises;

(3) work in a catering establishment at a railway station involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;

(4) work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines; and

(5) a port authority within the limits of any port.

Part B

Processes

(1) Bidi-making

(2) Carpet-weaving.

(3) Cement manufacture, including bagging of cement.

(4) Cloth printing, dyeing and weaving.

(5) Manufacture of matches, explosives and fire-works.

(6) Mica-cutting and splitting.

(7) Shellac manufacture.

(8) Soap manufacture.

(9) Tanning

(10) Wool cleaning

(11) Building and construction industry.

25. Section 14 of the Act has provided for punishment upto 1 year (minimum being 3 months) or with fine upto Rs. 20,000/- (minimum being ten thousand) or with both, to one who employs or permits any child to work in contravention of provisions in section 3. Even so, it is common experience that child labour continues to be employed. As to why this has happened despite the Act of 1986, has come to be discussed by Neera Burra, in her afore-mentioned book at pages 246 to 250 of the 1995 edition. It has been first pointed out that the occupations and processes dealt by the Act are same about which the repealed statute (Employment of Children Act, 1938) had mentioned, except that in Part B, one process has been added - the same being "building and construction industry". According to Neera, there are a number of loopholes in the Act which has made it "completely ineffective instrument for the removal of children working in industry". One of the clear loopholes mentioned is that children can continue to work if they are a part of family of labour. It is not necessary for our purpose to go into other infirmities pointed out. Nonetheless, it deserves to be pointed out that the Act does not use the word "hazardous" anywhere, the implication of which is the children may continue to work in those processes not involving chemicals. Neera has tried to show how impracticable and unrealistic it is to draw a distinction between hazardous and non-hazardous processes in a particular industry. The suggestion given is that what is required is to list the whole industry as banned for child labour, which would make the tasks of enforcement simpler and strategies of evasion more difficult.

Failure causes

26. We have, therefore, to see as to why is it that child labour has continued despite the aforesaid statutory enactments. This has been a subject of study by a good number of authors. It would be enough to note what has been pointed out in "Indian Child Labour" by Dr. J.C. Kulshreshtha. This aspect has been dealt in Chapter II. According to the author, the causes of failure are (1) poverty; (2) low wages of the adult; (3) unemployment; (4) absence of schemes for family allowance; (5) migration to urban areas; (6) large families; (7) children being cheaply available; (8) non-existence of provisions for compulsory education; (9) illiteracy and ignorance of parents; and (10) traditional attitudes. Nazir Ahmad Shah has also expressed similar views in his book "Child Labour in India". In the article at pages 65 to 68 of 1993(3) SCJ (Journal Section) titled "Causes of the exploitation of child labour in India", Dr. Amar Singh and Raghuvinder Singh, who are attached to Himachal Pradesh University, have taken the same views.

27. Of the aforesaid causes, it seems to us that the poverty is basic reason which compels parents of a child, despite their unwillingness, to get it employed. The Survey Report of the Ministry of Labour (supra) had also so stated. Otherwise, no parents, specially no mother, would like that a tender aged child should toil in a factory in a difficult condition, instead of it enjoying its childhood at home under the paternal gaze.

What to do?

28. It may be that the problem would be taken care of to some extent by insisting on compulsory education. Indeed, Neera thinks that if there is at all a blueprint for tackling the problem of child labour, it is education. Even if it were to be so, the child of a poor parent would not receive education, if per force it has to earn to make the family meet both the ends. Therefore, unless the family is assured of income aliunde, problem of child labour would hardly get solved; and it is this vital question which has remained almost unattended. We are, however, of the view that till an alternative income is assured to the family, the question of abolition of child labour would really remain a will-o-the wisp. Now, if employment of child below the age of 14 is a constitutional indiction insofar as work in any factory or mine or engagement in other hazardous work, and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought to do is see to the fulfilment of legislative intendment behind enactment of the Child Labour (Prohibition and Regulation) Act, 1986. Taking guidance therefrom we are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs. 20,000/- and the Inspectors, whose appointment is visualised by section 17 to secure compliance with the provisions of the Act, should do this job. The Inspectors appointed under section 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/- which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or area wise. The fund so generated shall form corpus whose income shall be used only for the concerned child. The quantum could be the income earned on the corpus deposited qua the child. To generate greater income, fund can be deposited in high yielding scheme of any nationalised bank or other public body.

29. As the aforesaid income could not be enough to dissuade the parent/guardian to seek employment of the child, the State owes a duty to come forward to discharge its obligation in this regard. After all, the aforementioned constitutional provisions have to be implemented by the appropriate Government, which expression has been defined in section 2(i) of the Act to mean, in relation to establishment under the control of the Central Government or a railway administration or a major port of a mine or oilfield, the Central Government and in all other cases, the State Government.

30. Now, strictly speaking a strong case exists to invoke the aid of an Article 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Article 47 relating to raising of standard of living of the population, and Articles 39(e) and (f) as to non-abuse of tender age of children and giving opportunities and facilities to them to develop in healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere, in lieu of the child. This would also see the fulfilment of the wish contained in Article 41 after about half a century of its being in the paramount parchment, like primary education desired by Article 45, having been given the status of fundamental right by the decision in *Unni Krishnan*. We are, however, not asking the State *at this stage* to ensure alternative employment in every case covered by Article 24, as Article 41 speaks about right to work "within the limits of the economic capacity and development of the State". The very large number of child-labour in the aforesaid occupations would require giving of job to very large number of adults, if we were to ask the appropriate Government to assure alternative employment in every case, which would strain the resources of the State, in case it would not have been able to secure job for an adult in a private sector establishment or, for that matter, in a public sector organisation. So we are not issuing any direction to do so presently. Instead, we leave the matter to be sorted out by the appropriate Government. In those cases where it would not be possible to provide job as above-mentioned, the appropriate Government would, as its contribution/grant, deposit in the aforesaid Fund a sum of Rs. 5,000/- for each child employed in a factory or mine or in any other hazardous employment.

31. The aforesaid would either see an adult (whose name would be suggested by the parent/guardian of the concerned child) getting a job in lieu of the child, or deposit of a sum of Rs. 25,000/- in the Child Labour Rehabilitation-cum-Welfare Fund. In case of getting employment for an adult, the parent/guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent/guardian shall have to see that his child is spared from the requirement to do the job, as an alternative source of income would have become available to him.

32. To give shape to the aforesaid directions, we require the concerned States to do the following:-

(1) A survey would be made of the aforesaid type of child labour which would be completed within six months from today.

(2) To start with, work could be taken up regarding those employments which have been mentioned in Article 24, which may be regarded as core sector, to determine which the hazardous aspect of the employment would be taken as criterion. The most hazardous employment may rank first in priority, to be followed by comparatively less hazardous and so on. It may be mentioned here that the National Child Labour Policy as announced by the Government of India has already identified some industries for priority action and the industries to *(sic)* identified are as below:-

The match industry in Sivakasi, Tamil Nadu.

The diamond polishing industry in Surat, Gujarat.

The precious stone polishing industry in Jaipur, Rajasthan.
The glass industry in Firozabad, Uttar Pradesh.
The brass-ware industry in Moradabad, Uttar Pradesh.
The hand-made carpet industry in Mirzapur-Bhadchi, Uttar Pradesh.
The lock-making industry in Aligarh, Uttar Pradesh.
The slate industry in Markapur, Andhra Pradesh.
The slate industry in Mandsaur, Madhya Pradesh.

(3) The employment to be given as per our direction could be dovetailed to other assured employment. On this being done, it is apparent that our direction would not require generation of much additional employment.

(4) The employment so given could as well be the industry where the child is employed, a public undertaking and would be manual in nature inasmuch as the child in question must be engaged in doing manual work. The understanding chosen for employment shall be one which is nearest to the place of residence of the family.

(5) In those cases where alternative employment would not be made available as aforesaid, the parent/guardian of the concerned child would be paid the income which would be earned on the corpus, which would be a sum of Rs. 25,000/- for each child, every month. The employment given or payment made would cease to be operative if the child would not be sent by the parent guardian for education.

(6) On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make it a better citizen. It may be pointed out that Article 45 mandates compulsory education for all children until they complete the age of 14 years; it is also required to be free. It would be the duty of the Inspectors to see that this call of the Constitution is carried out.

(7) A district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors. Further, in view of the magnitude of the task, a separate cell in the Labour Department of the appropriate Government would be created. Monitoring of the scheme would also be necessary and the Secretary of the Department could perhaps do this work. Overall monitoring by the Ministry of Labour, Government of India, would be beneficial and worthwhile.

(8) The Secretary to the Ministry of Labour, Government of India would apprise this Court within one year of today about the compliance of aforesaid directions. If the petitioner would need any further or other order in the light of the compliance report, it would be open to him to do so.

(9) We should also like to observe that on the directions given being carried out, penal provision contained in the aforenoted 1986 Act would be used where employment of a child labour, prohibited by the Act, would be found.

(10) Insofar as the non-hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are not more than four to six hours a day and it receives education at least for two hours each day. It would also be seen that the entire cost of education is borne by the employer.

33. The task is big, but not as to prove either unwieldy or burdensome. The financial implication would be such as to prove a damper, because the money after all would be used to build up a better India. In this context, it is worth pointing out that poverty as such has not stood in the way of other developing countries from taking care of child labour. It has been pointed out by Myron Weiner (at page 4 of 1991 Edition) of his book "The Child and the State in India" that India is a significant exception to the global trend towards the removal of children from the labour force and the establishment of compulsory, universal primary school education, as many countries of Africa like Zambia, Ghana, Ivory Coast, Libay, Zambia, Zimbabwe, with income levels lower than India, have done better in these matters. This shows that has caused the problem of child labour to persist here is really not dearth of resources, but lack of real zeal. Let this not continue. Let us all put our head and efforts together and assist the child for its good and greater good of the country.

34. The writ petition is disposed of accordingly.

35. We part with the fond hope that the closing years of the twentieth century would see us keeping the promise made to our children by our constitution about a half-century ago. Let the child of twenty-first century find himself not that "heaven of freedom" of which our poet laureate Rabindranath Tagore has spoken in Gitanjali.

36. Let a copy of this judgment is (*sic*) to be sent to Chief Secretaries of all the State Governments and Union Territories; so also to the Secretary, Ministry of Labour, Government of India for their information and doing the needful.

SCALE (PIL) 1981-97 1657

BANDHUA MUKTI MORCHA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 24 — Child labour in carpet industry in the State of Uttar Pradesh — Court reiterates the directions given in judgment reported in 1996(9) SCALE 42.

1. This writ petition under Article 32 of the Constitution has been filed by way of public interest litigation seeking issue of a writ of mandamus directing the Government to take steps to stop employment of children in Carpet Industry in the State of Uttar Pradesh; to appoint a Committee to investigate into their conditions of employment; and to issue such welfare directives as are appropriate for total prohibition on employment of children below 14 years and directing the respondents to give them facilities like education, health, sanitation, nutritious food, etc.

2. The main contention of the petitioner-group is that employment of the children in any industry or in a hazardous industry, is violative of Article 24 of the Constitution and derogatory to the mandates contained in Articles 39(e) and (f) and 45 of the Constitution read with the Preamble. Pursuant to the filing of the writ petition, this Court appointed Prem Bhai and others to visit factories manufacturing carpets and to submit their findings as to whether any number of children below the age of 14 years are working in the carpet industry etc. The Commissioner submitted his preliminary report. Subsequently, by Order dated August 1, 1991, this court appointed a Committee consisting of Shri J.P. Vergese, Ms. Gyansudha Mishra and Dr. K.P. Raju to go around Mirzapur area and other places where carpets are being weaved to find out whether children are being exploited and to submit a comprehensive report. In furtherance thereof,

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Order dated February 21, 1997 in W.P. (C) No. 12125 of 1984 [1997(3) SCALE 755] a comprehensive report was submitted on November 18, 1991. The matter was heard and arguments were concluded. The judgment was reserved by proceedings dated October 18, 1994. Since the judgment could not be delivered, the matter was directed to be posted before a Bench consisting of S. Saghir Ahmad, J. We have heard the counsel on both sides.

3. The primary contention by the petitioner on behalf of the children below the age of 14 years, is that the employment of children by various carpet weavers in Varanasi, Mirzapur, Jaunpur and Allahabad areas is violative of Article 24. The report of the Committee discloses the enormity of the problem of exploitation to which the children are subjected. Children ranging between 5 to 12 years having been kidnapped from the Village Chhichhori (Patna Block, District Palamau in Bihar) in January and February, 1984 in three batches and were taken to village Bilwari in Mirzapur District of U.P. for being engaged in carpet weaving centres. They are forced to work all the day. Virtually, they are being treated as slaves and are subjected to physical torture revealed by the presence of marks of violence on their person. The Commission/Committee visited 42 villages and found in all 884 looms engaging 42% of the work force with the children below the age of 14 years. The total number of children are 369; 95% of them are of tender age ranging between 6 to 11 years and most of them belong to the Scheduled Castes and Scheduled Tribes. Despite pursuation, they could not be released and continue to languish under bondage. The Commission visited several villages, personally contacted the parents of the children in different places and found that the children were taken against their wishes and are wrongfully forced to work as bonded labour in the carpet industries. They have furnished the list of the children whom they contacted and the list of the carpet industries whereat the children were found engaged. The question, therefore, is: whether the employment of the children below the age of 14 years is violative of Article 24 and whether the omission on the part of the State to provide welfare facilities and opportunities deprives them of the constitutional mandates contained in Articles 45, 39(e) and (f), 21, 14 etc.?

4. Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to this social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to the humanity. Mankind has best hold of itself. The parents themselves live for them. The embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physically and mentally - the nation gets deprived of the potential human resources for social progress, economic enpowerment and peace and order, the social stability and good citizenry. The founding fathers of the Constitution, therefore, have bestowed the importance of the role of the child in its best for development. Dr. Bhim Rao Ambedkar, was for a head of his time in his wisdom projected these rights in the Directive Principles including the children as beneficiaries. Their deprivation has deleterious effect on the

efficacy of the democracy and the rule of law.

5. Article 39 (e) of the Constitution enjoins that the State shall direct its policy towards securing the health and strength of workers, men and women; and the children of tender age will not be abused; the citizens should not be forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) enjoins that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 mandates that the State shall endeavour to provide free and compulsory education for all children until they complete the age of 14 years. The period of ten years provided therein has lost its relevance since as on date, more than 78 million out of 405 million children, 78% of them are employed between the age of 5 to 14 years without any basic and elementary education, health, access to nutrient food and leisure. Article 24 of the Constitution prohibits employment of the children in factories etc. so that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 21 mandates that no person shall be deprived of his life or personal liberty except according to the "procedure established by law" which this Court has interpreted to mean "due process of law". The bare of the poverty is the root of the child labour and they are being subjected to deprivation of their meaningful right to life, leisure, food, shelter, medical aid and education. Every child shall have, without any discrimination on the ground of caste, birth, colour, sex, language, religion, social origin, property or birth alone, in the matter of right to health, well being, education and social protection. Article 51-A enjoins that it shall be the duty of every citizen to develop scientific temper, humanism and the spirit of inquiry and to strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavour and achievement. Unless facilities and opportunities are provided to the children, in particular handicapped by social, economic, physical or mental disabilities, the nation stands to lose the human resources and good citizens. Education eradicates illiteracy a means to economic enpowerment and opportunity to life of culture. Article 26(1) of Universal Declaration of Human Rights assures that everyone has the right to education which shall be free, at least at the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made available and higher education shall equally be accessible to all on the basis of merit. Education enables development of human personality and strengthens the respect for human rights and fundamental freedoms. It promotes understanding, tolerance and friendship along people. It is , therefore, the duty of the State to provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens.

6. Due to poverty, children and youth are subjected to many visible and invisible sufferings and disabilities, in particular, health, intellectual and social degradation and deprivation. The Convention on the Rights of the Child which was ratified by the Government of India on November 20, 1989 recognises the rights of the child for full and harmonious development of his or her personality. Child should grow up in a family environment, in an atmosphere of happiness, love and understanding. The child should be fully prepared to live an individual life in society. Article 3 provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. Article 27(1) provides that the State parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 28 provides thus:

> "1. State Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
>
> (a) Make primary education compulsory and available free to all;
>
> (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
>
> (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
>
> (d) Make educational and vocational information and guidance available and accessible to all children;
>
> (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
>
> 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
>
> 3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods in this regard. Particular account shall be taken of the needs of developing countries."

7. Article 31(1) recognises the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. Article 32(1) which is material for the purpose of this case reads as under:

> "1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
>
> 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments. States Parties shall in particular:
>
> (a) Provide for a minimum age or minimum ages for admission to employment;
>
> (b) Provide for appropriate regulation of the hours and conditions of employment;
>
> (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article."

8. Article 36 states that State parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. No doubt, the Government, while ratifying the Convention with a reservation of progressive implementation of the governance, reminded itself of the obligations undertaken thereunder, but they do not absolve the State in its fundamental

governance of the imperatives of Directive Principles of the Constitution, particularly, Articles 45, 39(e) and (f), 46 read with the Preamble, Article 21, 23 and 24 of the Constitution rendering socio-economic justice to the child and their enpowerment, full growth of their personality - socially, educationally and culturally - with a right to leisure and opportunity for development of the spirit of reform, inquiry, humanism and scientific temper to improve excellence - individually and collectively.

9. In *Maharashtra State Board of Secondary and Higher Education vs. K.S. Gandhi* [(1991) 2 SCC 716], right to education at the secondary stage was held to be a fundamental right. In *J.P. Unnikrishnan vs. State of Andhra Pradesh* [(1993) 1 SCC 642], a Constitution Bench had held education upto the *(sic)* of 14 years to be a fundamental right; right to health has been held to be a fundamental right; right to potable water has been held to be a fundamental right; meaningful right to life has been held to be a fundamental right. The child is equally entitled to all these fundamental rights. It would, therefore, be incumbent upon the State to provide facilities and opportunity as enjoined under Article 39(e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary. As stated earlier, their employment - either forced or voluntary - is occasioned due to economic necessity; exploitation of their childhood due to poverty, in particular, the poor and the deprived sections of the society, is detrimental to democracy and social stability, unity and integrity of the nation.

10. Various welfare enactments made by the Parliament and the appropriate State Legislatures are only teasing illusions and a promise of unreality unless they are effectively implemented and make the right to life to the child driven to labour a reality, meaningful and happy. Article 24 of the Constitution prohibits employment of the child below the age of 14 years in any factory or mine or in any other hazardous employment, but it is a hard reality that due to poverty child is driven to be employed in a factory, mine or hazardous employment. Pragmatic, realistic and constructive steps and actions are required to be taken to enable the child belonging to poor, weaker sections, Dalit and Tribes and minorities, enjoy the childhood and develop its full blossomed personality - educationally, intellectually and culturally - with a spirit of inquiry, reform and enjoyment of leisure. The child labour, therefore, must be eradicated through well-planned, poverty-focussed alleviation, development and imposition of trade actions in employment of the children etc. Total banishment of employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and social risks etc. Therefore, while exploitation of the child must be progressively banned, other simultaneously alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like.

11. Illiteracy has many adverse effects in a democracy governed by rule of law. A free educated citizen could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform. Therefore, education is compulsory. Primary education to the children, in particular, to the child from poor, weaker sections, Dalits and Tribes and minorities is mandatory. The basic education and employment-oriented vocational education should be imparted so as to empower the children with these segments of the society to retrieve them from poverty and, thus, develop basic abilities, skills and capabilities to live meaningful life for economic and social enpowerment. Compulsory education, therefore, to these children is one of the principal means and primary duty of the State for stability of the democracy, social integration and to eliminate social tensions.

12. In *M.C. Mehta vs. State of Tamil Nadu & Ors.* [(1996) 6 SCC 756], this Court has considered the constitutional perspectives of the abolition of the child labour and the child below 14 years of age in the notorious Sivakasi Match Industries. It has mentioned in para 12 of the judgment the number of total workers and the child workers employed in the respective industries in the country. It has surveyed various enactments which prohibit employment of the child; the details thereof are not necessary to be reiterated. In para 27, it has noted the causes for failure to implement the constitutional mandate and has given various directions in that behalf. We, therefore, reiterate the directions given therein as *feasible inevitable*. We respectfully agreeing with them and reiterate the need for their speedy implementation.

13. We are of the view that a direction needs to be given that the Government of India would convene a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries holding concerned Departments, to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in *M.C. Mehta's case*; to evolve such steps consistent with the scheme laid down in *M.C. Mehta's case,* to provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court. The Central Government is directed to convene the meeting within two months from the date of receipt of the order. After evolving the principles, a copy thereof is directed to be forwarded to the Registry of this Court.

14. Shri Rakesh Dwivedi, learned Additional Advocate General of U.P. and Shri B.B. Singh, learned counsel for the State of Bihar, have taken notice on behalf of the States of Uttar Pradesh and Bihar respectively. They are directed to obtain the copy of the judgment and send the same to the respective States and to ensure implementation of directions issued by this Court from time to time to implement the welfare measures envisaged in the above orders until the principles and policies to be evolved in the aforedirected conference and implemented throughout the country.

15. Post this matter after three months.

16. The writ petition is, accordingly, disposed of subject to the above directions.

SCALE (PIL) 1981-97 1663

DR. UPENDRA BAXI & ORS. *Petitioners*

VS

STATE OF U.P. & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI., V. KHALID AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — RIGHTS OF WOMEN — AGRA PROTECTIVE HOME — Living conditions in Government Protective Home at Agra — Further directions given.

Bhagwati, CJI.— This writ petition has come up for hearing in view of certain developments which have taken place since the making of our last Order. It was on the basis of a letter addressed by the petitioners that this writ petition came to be entertained by the Court. The petitioners pointed out in the letter which was treated as a writ petition that the conditions in which girls were living in the Government Protective Home at Agra were abominable and they were being denied their right to live with basic human dignity by the State of Uttar Pradesh which was running the Protective Home. The Court thereupon made various orders from time to time with a view to improving the living conditions of the girls in the Protective Home and ensuring a decent and healthy standard of living for them. The Court also asked the District Judge to make periodic inspections of the Protective Home with a view to monitoring full and effective implementation of the various Orders made by the Court from time to time. The District Judge himself or an Additional District Judge nominated by him, inspected the Protective Home from time to time submitted Inspection Reports which came up for consideration before the Court on various occasions. It appears that the efforts made by the petitioners aided by Dr. R.S. Sodhi, Honorary General Secretary, Association for Social Health in India, were nearing successful conclusion when everything which had been done by the Court Order to improve the living conditions of the inmates of the Protective Home was set at naught by the State Government by shifting the Protective Home from its location in Vijaynagar colony to Adarsh Nagar, Rajwara.

2. The accommodation in the premises in Vijaynagar colony had been made fairly satisfactory by the State Government pursuant to the Orders made by the Court from time to time and the living conditions had considerably improved. But sometime in March, 1984 Dr. R.S. Sodhi who lived in Agra (he died some time back) came to know that the State Government was contemplating shifting of the Protective Home from the Vijaynagar colony to another locality. Immediately, on coming to know of this contemplated move on behalf of the State Government, Dr. R.S. Sodhi in a letter dated 14th March 1984 addressed to the District Judge, Agra pointed out that since the matter was pending in the Court, the Protective Home should not be shifted without the permission of the Court and the District Judge in his Inspection Report dated 15th March 1984 drew attention to this fact. The District Judge also in his Inspection Report dated 11th May, 1984 once again pointed out that he had already made it clear that "in case the Government wants to shift the Government Protective Home to any other building, the contention of Dr. Sodhi that permission of the Hon'ble Supreme Court is mandatory, may be considered seriously before taking any steps in this regard. The District Judge reiterated in his Inspection Report dated 5th January 1985 that "since the writ petition concerning the welfare of the inmates and

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Judgment dated July 23, 1986 in W.P. No. (Crl.) 1900 of 1981. [1986(2) SCALE 146] smooth running of the Protective Home is pending before the Hon'ble Supreme Court and the shifting of the Home to new building is concerned with this subject, hence it will be advisable for the Administration and the Government to seek prior approval of the Hon'ble Supreme Court before shifting the Home to the new building". It seems, however, that no steps were taken by the State Government or the Administration to obtain the permission of this Court for shifting the Protective Home to another building and without obtaining such permission the State Government, some time in the middle of 1985, surrendered possession of the premises in Vijayanagar colony to the landlord and shifted the Protective Home to new premises in Adarsh Nagar, Rajwara. It may be pointed out that the landlord had filed a suit against the State Government for eviction from the premises in Vijaynagar colony but the suit was ultimately dismissed and the dismissal was upheld by the High Court of Allahabad. There was, therefore, no pressure on the State Government to vacate the premises in Vijaynagar colony. Yet, the State Government surrendered possession of the premises to the landlord and accepted from him tenancy of the premise in Adarsh Nagar, Rajwara. Perturbed by this action on the part of the State Government, Dr. R.S. Sodhi addressed a letter dated 17th June, 1985 to the District Judge drawing his attention to the shifting of the Protective Home to the new premises without the permission of this Court and on the basis of this letter, the District Judge instructed the Additional District Judge to visit the new premises and to submit a report in regard to the comparative facilities of security, toilet and other amenities available in the new premises as compared to the old premises. The Additional District Judge after visiting the new premises submitted a Report dated 17th July 1985 in which he pointed out the following facts:

"In the previous building situated at Vijay Nagar Colony in which the Government Protective Home was situated had 4 flush latrines and 4 bathrooms constructed on the directions given by the Hon'ble Supreme Court. Besides, there was separate residence for Superintendent, Government Protective Home and one room measuring 22' x 15' half of which was used for the office and other half was used to hold classes for the inmates. Behind this hall there were two big verandas each measuring 21' x 12' and 18' x 12' which were used for the purpose of bedrooms for inmates after putting up 3 curtains as directed by the Hon'ble Supreme Court. Two rooms measuring 13' x 13' were used for sewing classes and for indoor games. Three underground cellers were used as store-rooms for miscellaneous purposes. There was one kitchen measuring about 15' x 15' in one corner. In addition to this there was a big lawn in front of the building wherein inmates could walk and play outdoor games and there was a big court-yard inside the building adjoining the verandah. Near about Rs. 15,000/- were spent by the State Government to make improvements as directed by the Hon'ble Supreme Court. The situation of the building was such that it was easily accessible and was not at much distance from hospitals and courts. The police out-post was quite near. The locality was very decent and safe, neat and clean. The building by appearance looked like a residential bungalow. From the safety point of view the old building was very good.

The new building where the Home has been shifted is situated at 34/58/2, Adarsh Nagar, Rajwara, Agra which is at the out-skirts of town, far away from the hospitals and courts where the inmates

> have to be frequently taken. The Yamuna river is just near this new building and there is 'Behar'. Even from the consideration of staff which is mostly consisting of female it is very unsafe place for them to come and go back to their homes. No public conveyance is available near it. The approach road is kachcha and uneven and is likely to be blocked during rains. From the security point of view this building is most unsafe. This new building is much inferior in every respect to the old building. Though the rooms in this building are quite big but they appear to have been constructed for the purposes of godown and not for the purposes of human dwelling. There are no cross ventilators and windows in these rooms and one will feel suffocation in entering in the room. This building belongs to the same person who is the owner of the old building.
>
> As regards the accommodation in this building; there is one room for the Superintendent's residence and 3 rooms for office purposes and for the actual living of the inmates. There is one big hall having no cross ventilation. There is only one window which opens in the veranda. When the room was opened bad smell was coming out of it and it is actually very difficult to live in the room during summer season. There is one big kitchen which too has no cross ventilation. There are 3 rooms, 2 in one side and one in other side of the kitchen which are to be used as class rooms for the inmates. These rooms also have no cross ventilation. Therefore, it will be very difficult to run classes in the rooms. There are 7 flush latrines and 7 bathrooms in this new building which are quite sufficient for the inmates. There is a big-court yard in the building. The roof cannot be used for want of stairs. There is no privacy for the inmates and members of the staff. The police station and police out-post are at much distance from this building. For the security of the inmates it is necessary that the armed police guard should be posted here round the clock. On comparison I find that this new building is much inferior to the old building from the point of view of security.
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> The new building is at a considerable distance from the Civil Courts. Therefore, the Government should be requested to provide conveyance to the Inspecting Judge...."

The Additional District Judge in his subsequent Inspection Report dated 2nd September, 1985 expressed his agreement with the finding reached by his predecessor "that the building is not suitable for the keeping of inmates as well as from the security point of view" and added :

> "I have been told by the Superintendent that the electric connection of the building had to be cut due to leakage of electric current a month back. It is told that due to rains the building becomes very dampy and place where the electric meter is installed is filled up with water. The electric line to the Home is of 440 volts instead of 220 volts as the building is in industrial area. That the inmates felt electric shocks on many occasions and ultimately the connection had to be cut off as per oral directions of the A.D.M. City Agra on 27.7.1985. That the Superintendent has contacted the owner of the present building who has promised to help. The electricity department has not yet submitted an estimate for changing the meter to a safer place. The Superintendent has been asked to contact the Executive Engineer, Electricity Board and if required, the district administration to get the electricity

> resumed as early as possible. The electricity is not only essential for the daily needs but it is very much essential from the security point of view also. The building is situated in a lonely place and sufficient light throughout the day and night is a must. Dr. R.S. Sodhi has suggested that the Superintendent should ask for a generator. I agree with him. The Superintendent should write to his department emphasizing the need for an electric generator, keeping in view that the building is situated in industrial area where electric cut is every day affair.
>
> Dr. R.S. Sodhi has drawn my attention to the fact that inspite of the mention by my learned predecessor in his last inspection about the necessity of posting a Police Guard, no such arrangement has yet been made by the District Police. I have asked the Superintendent to send a letter to the Senior Superintendent of Police, Agra, for either posting an Armed Guard at the Protective Home or opening a Police Outpost nearby. In this reference I would like to mention an event narrated to me by Smt. Sood. Smt. Sood on her last visit dated 21.8.1985 found an outsider on the roof of the Protective Home when asked how she came to the roof, the outsider told her that it is very easy to climb the western wall of the Protective Home. Keeping this fact into mind that it is an easy task for a girl to climb the roof of this new building, it becomes all the more necessary that proper security arrangement be made for the life and safety of the inmates and the lady staff working there."

It is indeed surprising that the State Government should have shifted the Protective Home from the building in Vijay Nagar colony to the new building in Adarsh Nagar, Rajwara without obtaining the permission of this Court. When the present case for ensuring decent living conditions for the inmates of the Protective Home was pending in this Court and this Court had shown great concern for the welfare of the inmates and issued various directions from time to time with a view to improving the living conditions in the Protective Home, the State Government ought to have applied to this Court for permission to shift Protective Home. It is a matter of regret that highly placed officers in the Administration should have totally ignored the pendency of the present case and proceeded to shift the Protective Home without as much as even informing the Court. We do not find in the affidavits filed on behalf of the State Government even an expression of regret on the part of the concerned officials for shifting the Protective Home without seeking the permission of the Court or even mentioning the proposal for shifting to the Court. It is obvious that what has been done has the effect of subverting the authority of this Court and unless proper and adequate expression of regret is forthcoming from the concerned officials, we may have to consider whether we should adopt appropriate proceedings against the erring officials.

3. The only argument put forward in the affidavit of Shri Ram Swarup, Deputy Secretary to the Government of Uttar Pradesh in support of shifting the Protective Home, was that the landlord was prepared to give more than double the carpet area in the new building at the same rent, viz., Rs. 375/- p.m. and the landlord had agreed to renovate and reconstruct the new building so as to make it fit for the Protective Home. We do not think we can accept this as a valid argument. It is no doubt true that the carpet area in the new building is almost double that in the old building but, as is clear from the Inspection Reports of the Additional District Judge dated 17th July 1985 and 2nd September 1985, the new building is from the point of view of

security, safety and other facilities very much inferior to the old building. We do not wish to repeat what has been stated by the learned Additional District Judge in the two Inspection Reports dated 17th July and 2nd September 1985, but from every point of view, except the carpet area, the new building is unsatisfactory and it is indeed surprising that the Administration should have opted in favour of the new building. Moreover, if it is true that the landlord agreed to renovate and reconstruct the new building with a view to making it fit for the Protective Home, it is difficult to understand why the Protective Home should have been shifted to the new building without the necessary renovation and reconstruction having been carried out by the landlord. The landlord should have been asked to put up windows in the hall, kitchen and the other three rooms for the purpose of providing cross ventilation, to carry out necessary repairs and renovation in the new building and to change the entire electrical wiring and the electric meter before shifting the Protective Home. But, none of these changes was required to be carried out by the landlord before shifting the Protective Home and it is indeed regrettable that Shri Ram Swarup should have stated in his affidavit that the State Government proposes to carry out the necessary repairs and renovation instead of requiring the landlord to do so as agreed by him. Should we not expect greater concern about public expenditure?

4. But, despite our anguish at shifting of the Protective Home from the old building to the new building, we cannot do anything about it since possession of the old building has already been surrendered to the landlord and the best that can be done in the circumstances is to start the process all over again and commence giving directions for improving the living conditions in the new building. We would, in the first place, call upon the State Government to file an affidavit of the Commissioner, Agra Division as to why the possession of the old building was handed over to the landlord in-spite of the fact that the landlord had lost his suit for eviction and why the Protective Home was shifted to a place which suffers from the various drawbacks set out in the Inspection Reports dated 17th July, 1985 and 2nd September, 1985. We would require the Commissioner, Agra Division to state in his affidavit as to whether he had gone and seen the new building before agreeing to shift the Protective Home and what steps were taken by him in order to make the new building fit for occupation by girls before shifting to the new building. We would also like the Commissioner, Agra Division to produce the correspondence which took place between the landlord and the Administration relating to the decision to surrender possession of the old building and accept the new building for the Protective Home as also to inform the Court as to what was the purpose for which the new building had been used prior to the shifting of the Protective Home. The Commissioner, Agra Division will also produce before the Court at the next hearing of the writ petition the pleadings in the suit for eviction of the old building filed by the landlord and the judgment of the Allahabad High Court confirming dismissal of the suit. Secondly, we would direct the State Government to carry out the following directions :

(1) The approach road to the new building that be made into a pucca or semi-pucca road so that it does not get blocked or waterlogged by rain. This shall be done within 3 months from today.

(2) The big hall as also the three rooms used as class-rooms and the kitchen shall be provided with cross ventilation by putting up sufficient number of windows so as to ensure passage of air in and out

the rooms. The District Judge or the Additional District Judge nominated by him shall determine how many windows are necessary to be constructed for this purpose.

(3) Exhaust fans shall be provided in the big hall, three classrooms, kitchen and office.

(4) The State Government shall provide police protection throughout day and night for the inmates of the Protective Home in the new building.

(5) The State Government shall either provide accommodation to the staff of the Protective Home in or near the new building or provide conveyance to the members of the staff for coming to the Protective Home and going back to their respective homes unless public transport is available in the immediate vicinity of the Protective Home.

(6) We are informed that mosquito nets have been provided by the State Government to each and every inmate as also to the members of the staff staying in the Protective Home but if that has not yet been done, the State Government shall immediately take steps to provide mosquito nets to each and every inmate and member of the staff staying in the Protective Home.

(7) The State Government shall provide a conveyance for taking the inmates to the Court and bringing them back to the Protective Home and similarly, conveyance shall also be provided to the District Judge or Additional District Judge inspecting the Protective Home.

(8) The District Manager (Telephones), Agra shall immediately shift the telephone to the new building and whatever steps are necessary for this purpose shall be taken by the State Government without any delay.

(9) The State Government shall immediately provide cooking gas in the kitchen so that it is not necessary to use wood for cooking which may emit a lot of smoke and lead to discomfort and suffocation on account of lack of ventilation.

(10) The State Government shall immediately proceed to carry out rewiring as also to instal the electric meter in a safe place where there is no dampness. We find from the latest Inspection Report of the Additional District Judge dated 30th June 1986 that the electric meter has been shifted to the chamber of the Superintendent. We hope and trust that the new place to which it is shifted is not damp so as to imperil the safety of the inmates. That is a matter which would have to be looked into by the District Judge or the Additional District Judge when he goes for inspection. But we also think it necessary to direct that since the electric line is of 440 voltage and not 220 voltage and would, therefore, be dangerous for the inmates, the State Government shall without any undue delay proceed to take the necessary steps to instal a generator so that the safety of the inmates is not jeopardised.

5. Thirdly, we find that despite directions given by this Court on various occasions, the State Government has not yet constituted a Board of Visitors as prescribed in Rule 40 of the Rules made under the Suppression of Immoral Traffic in Women & Girls Act. We would, therefore, direct the State Government to set up, within a period of two weeks from the receipt of this Order, a Board of Visitors on which there shall be at least three social activists working in the field of welfare of women and particularly suppression of immoral traffic in women and there shall also be included in the Board of Visitors two persons to be nominated by the District Judge, Agra within two weeks from today.

6. Fourthly, the Superintendent of the Protective Home shall take care to see that no woman or girl is detained in the Protective Home without due authority and process of law. The District Judge, Agra who carries out monthly inspection of the Protective Home shall verify during every visit that no woman or girl is detained except under the authority of law and if he finds that any of them is detained without any authority of law, he shall take steps to see that she is released and repatriated to her parents or husband or other proper authority.

7. Fifthly, we would direct the District Judge, Agra to nominate two socially committed Advocates who would by turns visit the Protective Home once in a fortnight and enquire from the inmates in regard to their needs and requirements and provide them legal aid and assistance, where required. Each of the Advocates visiting the Protective Home pursuant to this direction shall be paid by the State Government an honorarium of Rs. 50/- per visit plus out of pocket expenses.

8. Lastly, we are pained to point out that though we gave directions from time to time for formulating an effective programme of rehabilitation of the inmates in the Protective Home and the State Government also on several occasions promised that they would come forward with a rehabilitation programme, nothing seems to have been done by the State Government so far except engaging a sewing teacher. We have pointed out on more than one occasion that it is absolutely essential that the inmates in the Protective Home should be provided a proper rehabilitation programme so that when they come out of the Protective Home, they are in a position to look after themselves and they do not slide into prostitution on account of economic want. The inmates must be given vocational training and guidance by way of rehabilitation. We would, therefore, once again direct the State Government to produce at the next hearing of the writ petition a detailed rehabilitation programme which they have either set up or they propose to set up within a specified time limit. We would also like the Superintendent of the Protective Home to consider whether it would be possible to arrange for their wedding to proper persons in case they want to get married. The Superintendent of the Protective Home can follow the example of the Nari Niketan in Delhi where a Committee was set up by this Court for the purpose of investigating into the antecedents of the would-be bridegrooms in order to ensure that they were genuine persons wishing to marry the inmates and not bogus or sham bride-grooms who were going through the ceremony of marriage merely for the purpose of selling the inmates or pushing them into prostitution. The District Judge will constitute an appropriate Committee for this purpose consisting of himself and at-least two social activists. The State Government will also initiate proper follow up action in this behalf with a view to ensuring that the inmates are not taken back to the brothels or and they do not once again slide into prostitution.

9. The District Judge, Agra or any other Additional District Judge nominated by him shall visit the Protective Home once every month for the purpose of ensuring that the aforesaid directions given by us are carried out fully and effectively and he shall submit an Inspection Report to this Court on/or before the 15th of every month.

10. The writ petition shall now come up for hearing on 29th September 1986.

SCALE (PIL) 1981-97 1670

RESEARCH FOUNDATION FOR SCIENCE, TECHNOLOGY AND NATURAL RESOURCE POLICY *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: J.S. VERMA CJI., AND B.N. KIRPAL, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — HAZARDOUS WASTE — High Power Committee constituted — (Order reported in 1997(7) SCALE SP-5) — Court directs that it is appropriate that the Committee also consider the question "to examine the quantum and nature of hazardous waste stock lying at the docks/ports/ICDS and recommend a mechanism for its safe disposal or re-export to the original exporter.".

1. The learned Additional Solicitor General informs us that the Committee constituted by the earlier Order dated 13.10.1997 has been provided the necessary infrastructure to start functioning and its first meeting is to be held on 18.12.1997. The learned Additional Solicitor General also informed us that notification has been issued on 17.10.1997 as amended on 27.11.1997 incorporating therein a residuary term XII to consider any other related area as the Committee may deem fit.

2. It is appropriate that the Committee also consider the question "to examine the quantum and nature of hazardous waste stock lying at the docks/ports/ICDS and recommend a mechanism for its safe disposal or re-export to the original exporter." The learned Additional Solicitor General would arrange for this information being given to the Committee. A copy of this Order be given to the learned Additional Solicitor General, who will arrange delivery of the same to the Committee. Any other matter which is significant in this behalf may be brought to the notice of the Committee for due consideration by the petitioner.

3. List after six weeks.

Order dated December 15, 1997 in W.P. (C) No. 657 of 1995. [1998(1) SCALE 184]

SCALE (PIL) 1981-97 1670

INDIAN COUNCIL FOR ENVIROLEGAL ACION & ORS. *Petitioners*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: SUJATA V. MANOHAR AND D.P. WADHWA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — INDUSTRIAL POLLUTION — C.E.T.L. and P.E.T.L. have submitted their status report to Andhra Pradesh Pollution Control Board — Court directs Central Pollution Control Board to file its report within two weeks.

Order dated December 16, 1997 in I.A. Nos. 2, 9 & 11 in W.P. (C) No. 1056/90. [1998(1) SCALE 185]

1. C.E.T.L. and P.E.T.L. have submitted their status report to the Andhra Pradesh Pollution Control Board. The A.P. Pollution Control Board state that they will file these two reports in Court and furnish copies to all the members. The Central Pollution Control Board shall also file its report and furnish copies to all the parties within two weeks from today.

2. List the matter on 9th of January, 1998.

SCALE (PIL) 1981-97 1671

UNION OF INDIA & ORS. *Appellants*

VS

SUSHIL KUMAR MODI & ORS. *Respondents*

CORAM: J.S. VERMA CJI, S.P. BHARUCHA AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — CORRUPTION — FODDER SCAM — Cr.P.C. — SECTION 173(8) — Update of order reported in 1997(6) SCALE(SP) 20 — Whether when a charge-sheet having been filed against Shri Laloo Prasad Yadav in the Special Court, the monitoring process in the High Court in regard to this particular matter had come to an end — Allowing the appeals, Held,

A. Once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other concerned investigative agencies perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. (Para 6).

B. The monitoring by the High Court of the case for the purpose of ensuring that the CBI and other agencies properly investigate the alleged offences and file a charge-sheet if a prima facie case is made out does not mean that the normal disciplinary control of departmental superiors over the concerned officers stand transferred to the High Court. (Para 7).

Referred: Vineet Narain & Ors. vs Union of India [W.P. (Crl.) Nos. 340-343 of 1993].

1. I.A. Nos. 5 and 6 are allowed.

2. Leave granted.

3. These appeals by special leave are against the Order dated 29th August, 1997 passed by the Patna High Court in CWJC Nos. 1617 of 1996 and 602 of 1996.

4. The grievance made by the learned Attorney General, appearing for the appellant, the Union of India, is not merely against the directions given in the said order but also against the general observations made therein. It is submitted that a charge-sheet having been filed against Shri Laloo Prasad Yadav in the Special Court, the monitoring process in the High Court in regard to this particular matter had come to an end and, therefore, there was no occasion for the High Court to retain seisin over the same or to issue any directions, much less make the observations contained in the impugned order. The learned Attorney General also submitted that the warrant against Shri Laloo Prasad Yadav having been issued by the Special Court in which the charge-sheet had been filed after completion

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Order dated November 6, 1997 in C.A. Nos. 7586-7587 of 1997 (arising out of SLP (C) Nos. 17144-17145 of 1997). [1998(1) SCALE 251] of the investigation against him, the execution of the warrant was the concern of the Special Court and, therefore, there was no occasion for any officer of the CBI to approach the High Court or for the Division Bench of the High Court to issue any directions, oral or otherwise, for seeking the aid of the army for execution of the warrant against Shri Laloo Prasad Yadav. On this basis, it was contended that some of the directions given in the impugned order pertaining to the enquiry into the incident relating to the seeking of the aid of the army were not matters required to be gone into by the High Court and the directions relating to the same were untenable.

5. Shri Shanti Bhushan, the learned Amicus Curaie, rightly did not dispute the position that the monitoring process in the High Court in respect of the particular matter had come to an end with the filing of the charge-sheet in the Special Court and that the matter relating to execution of the warrant issued by the Special Court against Shri Laloo Prasad Yadav was a matter only within the competence of the Special Court so that there was no occasion for the High Court to be involved in any manner with the execution of the warrant.

6. This position is so obvious that no discussion of the point is necessary. However, we may add that this position has never been doubted in similar cases dealt with by this Court. It was made clear by this Court in the very first case, namely *Vineet Narain & Ors. vs. Union of India* (W.P. (Crl.) Nos. 340-343 of 1993), that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other concerned investigative agencies perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive. It is, therefore, clear that the impugned order of the High Court dealing primarily with this aspect cannot be sustained.

7. The learned Attorney General expressed the apprehension that certain observations in the impugned order of the High Court may be construed as enabling the High Court to monitor/control even disciplinary proceedings against an officer of the CBI if he happens to be in the team investigating any of the alleged offences. This prompts us to observe that the monitoring by the High Court of the case for the purpose of ensuring that the CBI and other agencies properly investigate the alleged offences and file a charge-sheet if a prima facie case is made out does not mean that the normal disciplinary control of departmental superiors over the concerned officers stand transferred to the High Court. The order made by the High Court in this behalf has to be understood merely as ensuring that there would be no interference in the investigative work being performed by the officers in the team which might hinder the course of the investigations.

8. We have already said that in this matter, after the charge-sheet was filed in the Special Court, no part of the proceeding remained in the High Court, since the process of monitoring had already ended with the filing of the charge-sheet, and, therefore, there was no occasion for any of the officers of the CBI to approach the High Court in respect of a matter which was being dealt with by the Special Court or for the High Court to take any action thereon. The entire order of the High Court having been made in this situation, the whole of it has to be set aside.

9. We make it clear that this order is in respect of the matter in which the charge-sheet has been filed. Further monitoring, if any, pending in the High Court will be done in accordance with this order.

10. We are thankful to Shri Shanti Bhushan, learned Amicus Curaie, for his able assistance.

11. The appeals are allowed and the impugned order dated 29th August, 1997 are set aside.

12. No costs.

SCALE (PIL) 1981-97 1673

VINEET NARAIN AND ORS. *Petitioners*

VS

UNION OF INDIA & ANR. *Respondents*

CORAM: J.S. VERMA CJI, S.P. BHARUCHA AND S.C. SEN, JJ.

PUBLIC INTEREST LITIGATION — CRIMINALISATION OF POLITICS — HAWALA CASE — Earlier order now reported — Court records that Status Report in respect of all matters pertaining to all the concerned Departments would be filed on or before 18th April, 1997.

1. Heard the learned Attorney General and the learned Amicus Curiae Shri Anil B. Divan.

2. The learned Attorney General states that a complete Status Report in respect of all matters pertaining to all the concerned Departments would be filed on or before 18th April, 1997. The learned Attorney General and the learned amicus curiae also submit that the broad points which are involved in the present case would be formulated and drafts of the same submitted by 18th April, 1997. The matter is to be heard thereafter.

3. List on 28th April, 1997.

Order dated April 7, 1997 in W.P. (Crl.) No. 340-43/93. [1998(1) SCALE (SP) 14]

SCALE (PIL) 1981-97 1673

RAKESH CHANDRA NARAYAN ETC. ETC. *Appellants*

VS

STATE OF BIHAR ETC. ETC. *Respondents*

CORAM: J.S. VERMA CJI, B.N. KIRPAL AND V.N. KHARE, JJ.

PUBLIC INTEREST LITIGATION — MENTALLY ILL — MENTAL ASYLUMS IN AGRA, RANCHI AND GWALIOR — Further improvement in their functioning — Court requests the NHRC to be involved in the supervision of the working of these Asylums to ensure that they function in the manner as is expected for achieving the object for which they have been set up — Order referred to reported in 1997(7) SCALE SP-17).

Referred: Dr. Upendra Baxi vs State of Uttar Pradesh & Ors. [1997(7) SCALE (SP)17].

Order dated November 11, 1997 in W.P. (C) Nos. 339/86, 901/93 & 448/94 with W.P. (C) No. 80/94.[1998(1) SCALE (SP) 14]

1. This matter pertains to the functioning of the Agra, Gwalior and Ranchi mental asylums. We have today made an order in Writ Petition (Crl.) No. 1900/81 (Dr. Upendra Baxi Vs. State of Uttar Pradesh & Ors.) requesting the National Human Rights Commission to be involved in the supervision of the functioning of the Agra Protective Home in the manner indicated in the order. We are of the opinion that the same kind of order needs to be made in this matter also relating to Agra, Ranchi and Gwalior asylums. Accordingly, we request the National Human Rights Commission to perform this exercise in the same manner. The general directions given in our order made in Writ Petition (Crl.) No. 1900/81 would also be equally applicable in the present case. A copy of this order together with a copy of the Order in Writ Petition (Crl.) No. 1900/81 and other relevant orders and papers of this matter indicated by Mr. Muralidhar, be sent by the Registry to the National Human Rights Commission.

2. We also place on record our appreciation to learned amicus curaie, Mr. S. Muralidhar, for the assistance rendered to the Court in these proceedings and his offer to assist the National Human Rights Commission also hereafter. We are sure that the Commission will appreciate his assistance in performance of this exercise.

SCALE (PIL) 1981-97 1674

SANJIT ROY *Petitioner*

VS

STATE OF RAJASTHAN *Respondent*

CORAM: P.N. BHAGWATI AND R.S. PATHAK, JJ.

PUBLIC INTEREST LITIGATION — STARVATION DEATHS — FAMINE RELIEF — RAJASTHAN FAMINE RELIEF WORKS EMPLOYEES (EXEMPTION FROM LABOUR LAWS) ACT, 1964 — Exclusion of operation of Minimum Wages Act — Constitutional validity of — Whether violates Articles 14 or 23 of Constitution — Held,

Per Bhagwati, J.

A. Where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words 'forced labour' and attracts the condemnation of Article 23. (Para 3).

B. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated. (Para 3).

C. Whenever any labour or service is taken by the State from any person, whether he be affected by drought and scarcity conditions or not, the State must pay, at the least, minimum wage to such person on pain of violation of Article 23 and the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Article 23. (Para 4).

Judgment dated January 20, 1983 in W.P. No. 6816 of 1981. [1983(1) SCALE 38]

D. The employer may fix any norm he thinks fit specifying the quantity of work which must be turned out by the workman during the day, but if the workman does not turn out work in conformity with such norm the employer cannot pay him anything less than the minimum wage. (Para 5).

E. If the norm fixed by the employer is reasonable and the workman does not turn out work according to such norm, disciplinary action may be taken against the workman and in a given case, he may ever be liable to be thrown out of employment, but he cannot be paid less than the minimum wage, unless, of course, the minimum wage fixed by the Notification under the Minimum Wages Act 1948 is co-related with the quantity of work to be turned out by the workman. (Para 5).

[Ed. Note : The learned Judge did not consider necessary to investigate violation of Art. 14]

Per Pathak, J.

[Ed. Note : The learned Judge who agreed with final order of Bhagwati, J. preferred to rest his decision on the ground there is a breach of Art. 14.]

F. The rights of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere. The mere circumstance that a worker belongs to an area affected by drought and scarcity conditions can in no way influence the scope and sum of those rights. (Para 10).

G. When the State employs workers for doing work needed on its development projects, it must find funds for such projects. And the fund must be sufficient to ensure the prescribed minimum wage to each worker; and this is particularly so having regard to the concept of a "minimum wage". It seems to me that by prescribing the criterion which it has, the Public Works Department has effected an invidious discrimination bearing no reasonable nexus to the object behind the employment. (Para 10).

Referred: Peoples Union for Democratic Rights & Ors. vs Union of India & Ors. [1982(1) SCALE 818].

Bhagwati, J.— The petitioner is the Director of a social action group called Social Work and Research Centre operating in and around Tilonia village in Ajmer district of the State of Rajasthan. The Social Work and Research Centre is a duly registered society and since February 1972, it has been actively engaged in the work of upliftment of Scheduled Castes and Scheduled Tribes in different areas and particularly in and around Tilonia village. It operates through various groups and the present writ petition has been filed by the petitioner for the purpose of remedying gross violations of the Minimum Wages Act, 1948 which have been discovered by one such group. These violations, according to the petitioner, have been taking place in the following circumstances and they need to be redressed through judicial intervention. The Public Works Department of the State of Rajasthan is constructing Madanganj Harmara Road close to village Tilonia and according to the State Government, it is part of famine relief work undertaken with a view to providing relief to persons affected by drought and scarcity conditions. The State Government in the Public Works Department has engaged a large number of workers for construction of this road and they include women belonging to Scheduled Castes. It is common ground that the minimum wage for a construction worker in Rajasthan is Rs. 7/- per day and it was asserted on behalf of the petitioner and not disputed on behalf of the State Government that the Notification fixing the minimum wage of Rs. 7/- per day does not specify any particular quantity of work to be turned out by the worker in order to be entitled to this minimum wage. Now the practice followed by the Public Works Department for engaging workers for the construction work is to issue an identity card to every resident in the famine affected area who registers himself with the Halka Patwari and the identity card would show the number of members in the family of the card-holder including males, females and children. Every resident in the famine affected area would be entitled to be employed in the famine relief work undertaken by the State Government on production of the identity card. This way a large number of workers including women belonging to Scheduled Castes are engaged in the construction work of the Madanganj-Harmara Road. The workers employed in this construction work are divided into gangs of 20 persons or multiple thereof and there is a separate muster roll for each such gang and the work done by it is measured every fortnight and payment is made by the Public Works Department to the Mate who is the leader of the gang according to the work turned out by such gang during each fortnight. The Public Works Department has fixed a certain norm of work to be turned out by each gang before the workmen belonging to such gang can claim the minimum wage of Rs. 7/- per day with the result that if any particular gang turns out work according to the norm fixed by the Public Works Department the Mate would be paid such amount as would on distribution give a wage of Rs. 7/- per day to the workmen constituting such gang, but if less work is turned out by such gang, payment to be made to the mate of such gang would be proportionately reduced and in that event, the wage earned by each member of such gang would fall short of the minimum of Rs. 7/- per day. The petitioner has stated in the writ petition that as a consequence of this practice followed by the Public Works Department workmen belonging to most of the gangs receive a wage very much less than the minimum wage of Rs. 7/- per day as illustrated by a few instances set out in Annexure I to the writ petition. The petitioner has also averred that even within the gang itself, differential payments are made to the workmen without any visible principle or norm and it is not uncommon that a worker who has put in full day's work throughout the period of the fortnight, may get less than the minimum wage of Rs. 7/- per day, while a worker who has put in much less work may get payment more than the proportionate wage due to him. This system of payment adopted by the Public Works Department created considerable discontent amongst the women workers belonging to Scheduled Castes who were engaged in this construction work and on 21st August, 1981 about 200 to 300 such women workers approached the Social Work and Research Centre seeking advice as to what course of action should be adopted by them for the purpose of eliminating differential payments in wages and securing payment of minimum wage of Rs. 7/- per day for each worker. Mrs. Aruna Roy, the Development Coordinator of the Social Work and Research Centre thereupon contacted Shri Atul Gupta, Asstt. Collector and both of them immediately proceeded to the site of the construction work. On their arrival at the site, an impromptu meeting took place where the women workers gave vent to their grievances which included inter alia complaint in regard to the "wide difference in respect of payments made by Mates to several gangs for the same category of work performed" and pointed out that "differentials in payments also existed between the women workers working in the same gang and performing the same category of work." Since these differential payments in wages were made by the Public Works Department to the gangs allegedly on the basis of the quantity of work turned out by each such gang and, according to the petitioner, there were, even within the gang itself, differentials in payment of wages to the workers resulting in perpetuation of inequality, the petitioner in his capacity as Director of the Social Work and Research Centre filed the present writ petition challenging the system of payment of wages to the workers and seeking a writ of mandamus directing the State Government to "comply with the prescribed rates of minimum wages under the Minimum Wages Act, 1948 as applicable in the State of Rajasthan."

2. When the writ petition reached hearing before us, the State Government produced the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 (hereinafter referred to as the Exemption Act) and relying upon this statute, the State Government contended that since the construction work of Madanganj-Harmara Road was a famine relief work, the Minimum Wages Act, 1948 was not applicable to employees engaged on this construction work by reason of section 3 of this Act. The Exemption Act is a Rajasthan statute enacted on 7th September, 1964 and it is deemed to have come into force with effect from 1st July, 1963. Section 2 clause (b) of this Act defines "famine relief works" to mean "works already started or which may hereafter be started by the State Government to provide relief to persons affected by drought and scarcity conditions" and "Labour Law" is defined in section 2 clause (c) to mean "any of the enactments as in force in Rajasthan relating to labour and specified in the Schedule." The Minimum Wages Act, 1948 is one of the enactments specified in the Schedule to the Exemption Act. Then section 3 of the Exemption Act proceeds to enact that "Notwithstanding..... any such law." Section 4 of the Exemption Act excludes the jurisdiction of courts and provides that "no court shall take cognizance of any matter in respect of an employee of famine relief works under any Labour Law", which includes the Minimum Wages Act, 1948. Now if the Exemption Act were a valid piece of legislation, it is obvious that no workman employed in a famine relief work would be entitled to complain that he is paid less than the minimum wage because the applicability of the Minimum Wages Act, 1948 would be excluded by reason of section 3 of the Exemption Act and the women workers engaged in the construction work of Madanganj Harmara Road would have to be content with whatever wage is paid to them even though it be less than the minimum wage of Rs. 7/- per day and their only complaint which would then survive would be that there is discrimination by reason of differential payment of wages to workmen doing the same quantity of work. The petitioner therefore sought leave to amend the writ petition by including a challenge to the constitutional validity of the Exemption Act and on such leave being granted. the petitioner filed an amended writ petition in this Court. The principal grounds on which the constitutionality of the Exemption Act was challenged were based on Articles 14 and 23 of the Constitution. I am, for reasons which I shall presently state, of the view, that the challenge under Article 23 is well founded and it is therefore not necessary to investigate the facts relating to the violation of Article 14 and I accordingly propose to confine my judgment only to a consideration of the attack based on Article 23. If the Exemption Act is unconstitutional on the ground that it violates. Article 23, it would be out of the way so far as the claim of the workmen for the minimum wage of Rs. 7/- per day is concerned and the only question then would be whether the workmen are entitled to the minimum wage of Rs. 7/- per day in any event or any deduction can be made from such minimum wage on the ground that the workmen have not turned out work according to the norm set down by the Public Works Department.

3. This Court had occasion to consider the true meaning and effect of Article 23 in a judgment given on 18th September, 1982 in writ petition No. 8143 of 1981 — *Peoples Union for Democratic Rights & Ors. vs Union of India & Ors.* 1982(1) SCALE 818. The Court pointed out that the constitution makers, when they set out to frame the Constitution, found that the practice of 'forced labour' constituted a ugly and shameful feature of our national life which cried for urgent attention and with a view to obliterating and wiping out of existence this revolting practice which was a relic of a feudal exploitative society totally incompatible with the new egalitarian socio-economic order which "We the people of India" were determined to build, they enacted Article 23 in the Chapter on Fundamental Rights. This Article, said the Court, is intended to eradicate the pernicious practice of 'forced labour' and to wipe it out altogether from the national scene and it is therefore not limited in its application against the State but it is also enforceable against any other person indulging in such practice. It is designed to protect the individual not only against the State but also against other private citizens. The Court observed that the expression "other similar forms of forced labour" in Article 23 is of the widest amplitude and on its true interpretation it covers every possible form of forced labour, begar or otherwise, and it makes no difference whether the person forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion and the same would be the position even if forced labour supplied by a person has its origin in a contract of service. The Court then considered whether there would be any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it and observed :

> "It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under the-law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour.' Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed

> his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly ‘forced labour.’ There is no reason why the word ‘forced’ should be read in a narrow and restricted manner so as to be confined only to physical or legal ‘force’ particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word ‘force’ must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is ‘forced labour’ because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words ‘forced labour’ under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be ‘forced labour’ and the breach of Article 23 is remedied.”

I must, therefore hold consistently with this decision that where a person provides labour or service to another or remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words ‘forced labour’ and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated.

4. If this be the correct position in law, it is difficult to see how the constitutional validity of the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act 1948 to the workmen employed in famine relief works can be sustained. Article 23, as pointed out above, mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage and if the Exemption Act, by excluding the applicability of the Minimum Wages Act 1948, provides that minimum wage may not be paid to a workman employed in any famine relief work, it would be clearly violative of Article 23. The respondent however contended that when the State undertakes famine relief work with a view to providing help to the persons affected by drought and scarcity conditions, it would be difficult for the State to comply with the labour laws, because if the State were required to observe the labour laws, the potential of the State to provide employment to the affected persons would be crippled and the State would not be able to render help to the maximum number of affected persons and it was for this reason that the applicability of the Minimum Wages Act 1948 was excluded in relation to workmen employed in famine relief work. This contention, plausible though it may seem is, in my opinion, unsustainable and cannot be accepted. When the State undertakes famine relief work it is no doubt true that it does so in order to provide relief to persons affected by drought and scarcity conditions, but, none the less, it is work which enures for the benefit of the State representing the society and if labour or service is provided by the affected persons for carrying out such work, there is no reason why the State should pay anything less than the minimum wage to the affected persons. It is not as if a dole or bounty is given by the State to the affected persons in order to provide relief to them against drought and scarcity conditions nor is the work to be carried out by the affected persons worthless or useless to the society so that under the guise of providing work what the State in effect and substance seeks to do is to give a dole or bounty to the affected persons. The Court cannot proceed on the basis that the State would undertake by way of famine relief, work which is worthless and without utility for the society and indeed no democratic State which is administered by a sane and sensible Government would do so because it would be sheer waste of human labour and resource which can usefully be diverted into fruitful and productive channels leading to the welfare of the community and creation of national asset or wealth. It is difficult to appreciate why the State should require the affected persons to provide labour or service on work which is of no use to the society, instead of simply distributing dole or bounty amongst the affected persons. There is no reason why the State should resort to such a camouflage. The presumption therefore must be that the work undertaken by the State by way of famine relief is useful to the society and productive in terms of creation of some asset or wealth and when the State exacts labour or service from the affected persons for carrying out such work, for example, a bridge or a road, which has utility for the society and which is going to augment the wealth of the State, there can be no justification for the State not to pay the minimum wage to the affected persons. The State cannot be permitted to take advantage of the helpless condition of the affected persons and extract labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions. The State cannot under the guise of helping these affected persons extract work of utility and value from them without paying them the minimum wage. Whenever any labour or service is taken by the State from any person, whether he be affected by drought and scarcity conditions or not, the State must pay, at the least, minimum wage to such person on pain of violation of Article 23 and the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Article 23. The Exemption Act cannot in the circumstances be relied upon by the respondent as exempting it from the liability to pay minimum wage to the workmen engaged in the construction work of Madan-ganj Harmara Road.

5. We must then proceed to consider whether on the facts the labour provided by the workers employed in the construction work of Madanganj Harmara Road could be said to be 'forced labour' on the ground that they received wage less than Rs. 7/- per day. Now it was not disputed on behalf of the respondent that the wage paid to a gang of workmen depended upon the work turned out by a particular gang and if it was less than the norm fixed by the Public Works Department, the wage earned by each member of the gang would fall short of the minimum wage of Rs. 7/- per day. But the argument was that this did not involve any breach of Article 23 because if any particular gang turned out work according to the norm fixed by the Public Works Department, the amount paid to the Mate of the gang was enough to give to each workman, on distribution, the minimum wage of Rs. 7/- per day, and it was only if less work was turned out by the gang that the workmen would receive less than the minimum wage of Rs. 7/- per day and this result would ensue not on account of any default on the part of the respondent but entirely because of the lethargy of the workmen constituting the gang. The workmen, said the respondent, could always earn the minimum wage of Rs. 7/- per day by turning out work according to the norm fixed by the Public Works Department but if they did not do so and in consequence received less than the minimum wage of Rs. 7/- per day the respondent could be held responsible for breach of the fundamental right conferred under Article 23. This argument does, at first blush, appear to be attractive, but a closer scrutiny will reveal that it is unfounded. If we look at the Notification issued under the Minimum Wages Act 1948 fixing the minimum wage of Rs. 7/- per day for workmen employed in the construction work, it will be obvious that the minimum wage is fixed per day and not with reference to any particular quantity of work turned out by the workman during the day. Nor does the Notification empower the employer to fix any particular norm of work to be carried out by the workman with reference to which the minimum wage shall be paid by the employer. The minimum wage is not fixed on piece rate basis, so that a particular minimum wage would be payable only if a certain amount of work is turned out by the workman and if he turns out less work, then the minimum wage payable would be proportionately reduced. Here the minimum wages is fixed at Rs. 7/- per day and that is the minimum wage which must be paid by the employer to the workman so long as the workman works throughout the working hours of the day for which he can lawfully be required to work. The employer may fix any norm he thinks fit specifying the quantity of work which must be turned out by the workman during the day, but if the workman does not turn out work in conformity with such norm, the employer cannot pay him anything less than the minimum wage. If the norm fixed by the employer is reasonable and the workman does not turn out work according to such norm, disciplinary action may be taken against the workman and in a given case, he may ever be liable to be thrown out of employment, but he cannot be paid less than the minimum wage, unless, of course, the minimum wage fixed by the Notification under the Minimum Wages Act 1948 is co-related with the quantity of work to be turned out by the workman. Otherwise, it would be the easiest thing for the employer to fix an unreasonably high norm which a workman working diligently and efficiently during the day cannot possibly reach and thereby deprive the workman of the minimum wage payable to him. There can therefore be no doubt that in the present case the respondent was not entitled to pay less than the minimum wage to the workmen belonging to a gang on the ground that such gang turned out work less than the norm fixed by the Public Works Department.

6. I must therefore hold that each workman employed in the construction work of Madan-ganj Harmara Road was entitled to receive the minimum wage of Rs.7/- per day from the respondent and the respondent was not entitled to reduce the wage payable to the work-man below the minimum of Rs. 7/- per day on the ground that the gang of which the workman was a member had turned out work less than the norm fixed by the Public Work Department. I would accordingly direct the respondent to pay to each workman employed in the construction work of Madan-ganj Harmara Road the difference between the minimum wage of Rs. 7/- per day and the actual wage paid during the period that the workman provided labour on this construction work. I do not think it should be difficult for the State to carry out this direction since the workmen employed on this construction work are all residents of the surrounding area and the muster roll maintained by the Public Works Department would give the particulars of such workmen. I would direct that the arrears of difference between the minimum wage of Rs. 7/- per day and the actual wage disbursed shall be paid by the respondent to the workmen within two months from today and a report to that effect shall be submitted by the respondent to this Court on or before 30th April, 1983 setting out particulars of the payments made and the names of the workmen to whom such payments are made. I would also direct that the State shall hereafter pay to each workmen employed in any famine relief work including the construction work of Madan-ganj Harmara Road, minimum wage for the labour provided in such construction work and no deduction in the minimum wage shall be made on the ground that the work turned out by such workman is less than the norm fixed by the Public Works Department, unless, and until a Notification is issued under the Minimum Wages Act 1948 co-relating the minimum wage with a particular quantity of work to be turned out by the workman.

7. Since the petitioners have succeeded in the writ petition, the respondent will pay the costs of the writ petition to the petitioners.

Pathak, J.— I agree with the order proposed by my learned brother. But while he has found substance in the contention that the case is one of "forced labour" within the meaning of Art. 23 of the Constitution, I prefer to rest my decision on the ground that there is a breach of Art. 14 of the Constitution.

9. It appears that in order to provide relief to persons affected by drought and scarcity conditions in the area, employment has been offered in the construction of the Madanganj

Harmara Road. Payment of wages for the day is determined by the Public Works Department on the basis of a standard norm of work, the wages for completing the daily standard norm being fixed at Rs. 7/-. It may be noted that the minimum wage prescribed under the Minimum Wages Act, 1948 in respect of such work is also Rs. 7/- per day. The Public Works Department has declared that if the quantum of work turned out during the day is less than the fixed standard norm the workers will be paid a mere proportionate amount of the wages of Rs. 7/- per day, that is to say they will be entitled to a reduced wage only. Sanction for not adhering to the prescribed minimum wage of Rs. 7/- per day and making payment of a lesser wage has been drawn from s.3 of the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964, which provides, inter alia, that the Minimum Wages Act, 1948 will not apply to famine relief works or the employees thereof. The Minimum Wages Act being thus out of the way, it is open to the Public Works Department to prescribe whatever wage norms it considers appropriate for payment to persons, employed by way of relief, who are affected by drought and scarcity conditions. It is apparent that in the matter of wages such persons have been treated as a class different from that to which workers from other areas belong. While the latter are entitled under the Minimum Wages Act to the prescribed minimum wage, the former must be content with a lesser wage if the work turned out is less than the norm. To my mind, there is no justification for such discrimination.

10. The circumstance that employment has been given to persons affected by drought and scarcity conditions provides only the reason for extending such employment. In other words, the granting of relief to persons in distress by giving them employment constitutes merely the motive for giving them work. It cannot affect their right to what is due to every worker in the course of such employment. The rights of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere. The mere circumstance that a worker belongs to an area affected by drought and scarcity conditions can in no way influence the scope and sum of those rights. In comparison with a worker belonging to some other more fortunate area and doing the same kind of work, is he less entitled than the other to the totality of those rights? Because he belongs to a distressed area, is he liable, in the computation of his wages, to be distinguished from the other by the badge of his misfortune? The prescription of equality in Art. 14 of the Constitution gives one answer only, and that is a categorical negative. It is urged for the respondents that employment is provided to all able-bodied inhabitants of the area as a measure of relief in their distress and it has been considered desirable to provide employment to all, even though at a wage below the prescribed minimum wage, than to provide employment to some only at the prescribed minimum wage. The argument evidently proceeds on the assumption that the wages are drawn from a fund too limited to provide for payment of a minimum wage to all. I see no justification for proceeding on that assumption. When the State employs workers for doing work needed on its development projects, it must find funds for such projects. And the fund must be sufficient to ensure the prescribed minimum wage to each worker; and this is particularly so having regard to the concept of a "minimum wage". It seems to me that by prescribing the criterion which it has, Public Works Department has effected an invidious discrimination bearing no reasonable nexus to the object behind the employment.

11. In my judgment, the workers employed in the construction of the

Madanganj Harmara Road as a measure of relief in a famine stricken area are entitled to a minimum wage of Rs. 7/- per day, and that wage cannot be reduced by reference to the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 196 because in so far as the provisions of S.3 o that Act countenance a lesser wage the operate against Art. 14 of the Constitution an are, therefore, void.

SCALE (PIL) 1981-97 1684
KRISHNA NAGAR GRAM PANCHAYAT TADEPAELI *Petitione*
VS
STATE OF ANDHRA PRADESH & ANR. *Respondent*
CORAM: P.N. BHAGWATI, AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — QUARRYING OPERATIONS — Directions given.

1. We are informed by Mr. Narasimhachari, learned advocate appearing on behalf of Andhra Pradesh, that the State Government has instituted an inquiry upon the complaint made by the people of village Nulakapettam and the Assistant Director of Mines & Geology has, after making an inquiry, submitted his report to the Director of Mines and Geology and the matter is under consideration of the Director. We would suggest that this inquiry may be completed as soon as possible and the Director may, on the basis of such inquiry, take such steps as may be permissible to him under the law, including possible cancellation of the lease granted in favour of Respondent no.3. We would also direct that, without prejudice and in addition to any inquiry which may be made and any action which may be taken by the Director, an independent inquiry shall be made by responsible officer, preferably stationed i Hyderabad, to be nominated by the Directo General, Geological Survey of India, for th purpose of determining whether the quarryin operations, which are being carried on or whic may hereafter be carried on by Res. no. pursuant to the lease granted to him by the Stat Government, are likely in any manner to affec the health and well being of the people livin in Village Nulakapettam within Krishnanaga Gram Panchayat, Tehsil Mangalpuri, Distt Guntur or to cause damage to their houses o other properties or to render their existenc or life precarious and unsafe. The report shal be made by the Officer nominated by th Director General, on or before 31.8.1983.

2. The Writ Petition will stand adjourne to 1st September, 1983.

Order dated August 18, 1983 in W.P. No. 8211 of 1983. [1983(2) SCALE 735]

SCALE (PIL) 1981-97 1684
KAMESHWAR PRASAD SHARMA *Petitione*
VS
STATE OF BIHAR *Responden*
CORAM: P.N. BHAGWATI AND AMARENDRA NATH SEN, JJ.

Order dated May 6, 1983 in W.P. (Crl.) No. 1366 of 1982. [1983(2) SCALE 897]

PUBLIC INTEREST LITIGATION — WEAKER SECTIONS — REHABILITATION — Directions issued.

1. Mr. Govind Mukhoti, learned Advocate appearing on behalf of the petitioner requests that suitable protection be provided to the petitioner and 445 families living in village Banda until the writ petition is disposed of by this Court. The arguments on the writ petition have been concluded only yesterday evening and since the Court is closing today for the Summer vacation it is not possible to deliver Judgment disposing of the writ petition until the Court reopens after the summer vacation. Meanwhile it is necessary that suitable protection should be provided to the petitioner and 445 families living in village Banda. The Learned Additional Solicitor General appearing on behalf of the State of Bihar agrees that in view of the fact that to writ petition has already been argued but there is no time for deliver of the judgment because the Court is closing for the Summer Vacation the State of Bihar will ensure that the 445 families living in village Banda are not in any way disturbed from the places where they are living at present nor will they be harassed in any manner what so ever by the landlords or any one also and that suitable protection will be provided to them so that they can live in peace without any apprehension or danger until the writ petition is dispossed of by this Court by judgment. We Order accordingly and direct that suitable armed police force may be stationed near the basti of these 445 families so as to provide protection and security to them against any possible attack or harassment by the landlords or any other persons or person. The armed police force may preferably be kept at the place at which it was stationed some time back, before it was to place mid-way between the basti of these 445 families and the area where the landlords are residing the intention being that the armed police force should be stationed in such a manner that of factive protection and security can be ensured to these 445 families. The petitioner also is apprehensive about his personal safety and security and hence we would direct that a shadow or plain clothed police man should be provided for the protection and security of the petitioner and such shadow or plain clothed police man shall be armed with a revolver. This direction we are giving only as an interim measure until judgment is delivered in the writ petition and it shall not be treated as precedent.

2. The writ petition will be posted for delivery of judgment after the re-opening of the Court after the summer vacation. Copies of this order shall be supplied immediately to the Advocates of the parties.

SCALE (PIL) 1981-97 1685
RAM KUMAR MISRA *Petitioner*

VS

STATE OF BIHAR & ORS. *Respondents*
CORAM: P.N. BHAGWATI, AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.

PUBLIC INTEREST LITIGATION — LABOUR LAWS — MINIMUM WAGES — MINIMUM WAGES ACT, 1948 — Application of — Ferries situated in Bihar — Magistrate's report

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udgment dated September 21, 1983 in Crl. W.P. No. 53 of 1983. [1983(2) SCALE 975]

that Act applied to the said Ferries — Directions given.

Bhagwati, J.— This writ petition has been filed on the basis of a letter addressed by one Ram Kumar Misra, President of Free Legal Aid Committee, Bhagalpur. This letter complained that the workmen employed in two ferries-one at Bhagalpur and the other at Sultanganj-which were being operated by respondent No.5 were not being paid minimum wages as prescribed by the relevant notification issued under the Minimum Wages Act, 1948. The wages of the workmen employed in these two ferries were given in the annexure-to the letter and the amount of the difference between what the petitioner claimed to be the minimum wage payable to the workmen and the actual wage paid to them, was set out in the annexure. The letter was treated as a writ petition and by an order dated 25th January, 1983, this Court issued notice on the writ petition and on Mr. Goburdhan, learned Advocate, for the State of Bihar, waiving service of the notice, the District Magistrate, Bhagalpur and Ram Kumar Misra, the petitioner, were directed to jointly carry out an inquiry into the various averments made in the writ petition and submit a report within two weeks from the date of the order. The direction for holding an inquiry was given by us because we wanted to satisfy ourselves whether there was a prima facie case to proceed further with the writ petition. Pursuant to the order made by us, the District Magistrate, Bhagalpur and the petitioner conducted a joint inquiry into the various averments made in the writ petition and they finally submitted a report dated 23rd February, 1983 stating that in their opinion, in the light of the material gathered at the inquiry, the ferries operated by respondent No. 5 at Bhagalpur and Sultanganj were establishments to which the Minimum Wages Act, 1948 applied, since they fell within Entry 27 in the Schedule to the Act and respondent No.5 was, therefore, liable to pay minimum wages to the workmen employed in the two ferries with effect from 20th January, 1979, that being the date when the notification issued under section 3(1) (a) of the Minimum Wages Act, 1948 was amended so as to make the minimum wage applicable to "employment in any shop or establishment other than that covered under any of the other entries in this Schedule."

2. We may appoint out that there was also one other complaint made in the writ petition, namely, that the workmen were made to work as bonded labourers, but his complaint was not found to be correct by the District Magistrate, Bhagalpur and the petitioner in the Report made by them.

3. When the report was received by this Court, copies thereof were supplied to the learned Advocates appearing on behalf of the parties. Respondent No.5 who was joined as respondent to the writ petition on an application made by him and who appeared at the hearing of the writ petition, disputed the correctness of the report made by the District Magistrate, Bhagalpur and the petitioner. It is not necessary for us for the purpose of the present writ petition to go into the question whether the facts stated in the report are correct or not, because, as we have stated above, the report was called for by us for the purpose of satisfying ourselves that there was a prima facie case for respondent No.5 to meet. The only question which was raised before us and argued vehemently on both sides was whether the Minimum Wages Act, 1948 applied at all to the Bhagalpur and Sultanganj ferries owned by respondent No.5. The argument of respondent No.5 was that the Minimum Wages Act, 1948 had no application to these two ferries since they did not fall within any of the entries in the

Schedule to the Act, whereas, on the other hand, both the petitioner and the State Government argued that the Act applied to these two ferries because they were establishments within Entry 27 of the Schedule to the Act. These rival contentions raised a short question of construction of the relevant provisions of the Minimum Wages Act, 1948 and the notifications issued under that Act.

4. The Minimum Wages Act, 1948 provides for fixation of Minimum rates of wages in certain employments. Sec. 3(1)(a) provides that the appropriate Government shall fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule. Sub-section (IA) of Section 3 enacts that "Notwithstanding anything contained in sub-sec. (1), the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole state less than 1,000 employees engaged in such employment." It is obvious that sub-sec. (IA) of sec. 3 does not preclude the appropriate Government from fixing minimum rates of wages in respect of any scheduled employment even if there are in the whole State less than 1,000 employees engaged in such employment. It merely empowers the appropriate Government to refrain from fixing minimum rates of wages in respect of such employment. Leaving it open to the appropriate Government to fix minimum rates of wages in respect of such employment, if it so thinks fit.

5. The Schedule to the Act lists various employments in respect of which minimum rates of wages can be fixed by the appropriate Government. Mr. Verghese, learned Advocate appearing on behalf of the petitioner, relied on Entry 6 of the Schedule which reads "Employment under any local authority" but we do not think any reliance can be placed upon it, because in the present case, the workmen, on whose behalf claim of minimum wages has been made, are not employed under any local authority. Respondent No.5, who is the employer of the workmen employed in the Bhagalpur and Sultanganj ferries, is not a local authority; he is merely a lessee of the tolls of a public ferry. Entry 6 in the schedule can, therefore, have no application in the present case, but there is Entry 27 in the Schedule which helps the petitioner. This Entry prior to its amendment by the State Government on 25th November, 1978 read as follows :

> "27. Employment in Shops and Establishments registered under the Bihar Shops and Establishments Act, 1953, other than those covered under any of the other entries in this Schedule."

The Bhagalpur and Sultanganj ferries were not establishments registered under the Bihar Shops and Establishments Act, 1953 and prima facie, they would not, therefore, be covered by Entry 27 as it stood prior to 25th November, 1978. But Entry 27 was amended to enlarge its scope and the amended Entry read as follows :

> "27. Employment in any Shop or Establishment other than that covered under any of the other entries in this Schedule."

The State Government thereafter issued a Notification dated 20th January, 1979 in exercise of the powers conferred under sec. 3(1)(a) of the Minimum Wages Act, 1948 amending an earlier Notification dated 25th June, 1975 under which rates of minimum wages were fixed for different categories of employees employed in shops and establishments registered under the Bihar Shops and Establishments Act, 1953 other than those covered under any of the other entries in the Schedule and by this amendment, the words "Employment in Shops and Establishments registered under the Bihar Shops and Establishments Act, 1953, other than those covered under any of the other entries in this Schedule" were substituted by the words "Employment in any shop or establishment other than that covered under any of the other entries in this Schedule." The object of the amendment was to make the Notification dated 25th June, 1975 applicable in relation to employment in any shop or establishment other than that covered under any of the other entries in the Schedule so as to bring it in line with the amended Entry 27 in the Schedule.

6. Now it is clear from the Explanation to the amended Entry 27 that the word "establishment" in that entry has the same meaning which is assigned to it in the Bihar Shops and Establishments Act, 1953 and we must, therefore, look at the definition of "establishment" as given in the Bihar Shops and Establishments Act, 1953 in order to determine as to whether the Bhagalpur and Sultanganj ferries could be said to be establishments within the meaning of the amended Entry 27. The word "establishment" is defined in sec. 2(6) of the Bihar Shops and Establishments Act, 1953 to mean an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession. Now it can hardly be disputed that the Bhagalpur and Sultanganj ferries are establishments which carry on business or trade of plying ferries across the Ganges and they are clearly within the meaning of the word "establishment" in sec. 2(6) of the Bihar Shops and Establishments Act, 1953 and consequently they would also be establishments within the meaning of that expression as used in the amended Entry 27. The Minimum Wages Act, 1948 would, therefore, clearly be applicable to employment in the Bhagalpur and Sultanganj ferries. Since the Notification dated 25th June, 1975 as amended by the Notification dated 20th January, 1979 fixes rates of minimum wages for different categories of employees employed in any establishment, which would cover the Bhagalpur and Sultanganj ferries, there can be no doubt that the workmen employed in these two ferries were entitled to receive minimum wages as laid down in the Notification dated 25th June, 1975 read with the Notification dated 20th January, 1979 with effect from the date of latter notification.

7. It appears that a further Notification was issued by the State Government on 26th November, 1981 in exercise of the powers conferred under sec. 3(1) read with sec. 5(2) of the Minimum Wages Act, 1948 revising the minimum rates of wages for different categories of employees employed in any shop or establishment other than that covered under any of the other entries in the Schedule. This Notification came into force with effect from 26th November, 1981. The workmen employed in Bhagalpur and Sultanganj ferries were, therefore, entitled to the revised minimum wage as set out in the Notification dated 26th November, 1981 with effect from that date.

8. We accordingly reach the conclusion that the workmen employed in the Bhagalpur and Sultanganj ferries were entitled to receive minimum wage as set out in the Notification dated 25th June, 1975 as amended by the Notification dated 20th January, 1979 for the period from 20th January, 1979 upto 25th November, 1981 and thereafter at the rate fixed in the Notification dated 26th November, 1981. The question, however, remains whether the workmen were paid wages at these minimum rates. Since there is a dispute between the parties in regard to this question, the argument of the petitioner being that the workmen were not paid wages at these minimum rates, while the contention of respondent No.5 being that they were so paid, it becomes necessary to give directions for the purpose of determining whether the workmen employed in these two ferries were paid wages at these minimum rates with effect from 20th January, 1979. We would therefore direct the Labour Department of the Government of Bihar to intimate to the petitioner as to which is the appropriate authority under the Minimum Wages Act, 1948 for adjudicating upon the claims of the workmen employed in these two ferries for arrears of minimum wage. The appropriate authority will, by adopting suitable means including the giving of publicity, invite the workmen to file their claims for arrears of minimum wage and not only the workmen will be entitled to file their claims but the petitioner who has moved this court will also be at liberty to file claims on behalf of the workmen for arrears of minimum wages. The appropriate authority will inquire into all such claims which may be filed before it by or on behalf of the workmen and determine, after giving full opportunity to respondent No.5 of being heard in the matter, whether any and if so what arrears of minimum wage in the light of this judgment remain to be paid by respondent No.5 to the workmen employed in these two ferries. The workmen will be entitled to appear before the appropriate authority either personally or through their agent or advocate and the petitioner will also be at liberty to appear before the appropriate authority on behalf of the workmen. If any amount is determined by the appropriate authority to be payable by respondent No.5 to any of the workmen in respect of the arrears of minimum wage, respondent No.5 is directed to make payment of the same within one month from the date of the order of the appropriate authority. The appropriate authority will carry out directions given by us and complete the assignment entrusted to it within six months from today. We would also direct respondent No.5 to pay to the workmen employed in these two ferries minimum wage at the rate fixed under the Notification dated 26th November, 1981 or at such other revised rate or rates as may be fixed from time to time.

9. So far as the costs of the writ petition are concerned since the petitioner has come to this court for the purpose of vindicating the rights of poor workmen, we would direct the State of Bihar to pay to the petitioner a sum of Rs. 2,000/- by way of costs.

SCALE (PIL) 1981-97 1689
LABOURERS WORKING ON SALAL HYDRO-PROJECT *Petitioner*
VS
STATE OF JAMMU & KASHMIR *Respondent*
CORAM: P.N. BHAGWATI AND R.B. MISRA, JJ.

PUBLIC INTEREST LITIGATION — LABOUR LAWS — DENIAL OF BENEFIT — SALAL HYDRO ELECTRIC PROJECT — Denial of benefit of various labour laws to the workmen engaged in the project.

Bhagwati, J.— This is one of those case by way of public interest litigation where positive results have been achieved for the benefit of the workmen employed on the Salal Hydro Electric Project as a result of judicial intervention. It is not necessary to set out the history of this litigation because the facts giving rise to this litigation have been set out

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Judgment dated April 25, 1984 in Crl.W.P. No. 1179 of 1982 [1984(1) SCALE 680] in detail in the interim judgment delivered by us on 2nd March 1983. Suffice it to state that this litigation was started on the basis of a letter addressed by the People's Union for Democratic Rights to Mr. Justice D.A. Desai enclosing a copy of the news item which appeared in the issue of Indian Express dated 26th August 1982 pointing out that a large number of workmen working on the Salal Hydro Electric Project were denied the benefit of various labour laws and were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. The letter was treated as a writ petition and by an order dated 10th September 1982, the Union of India and some other parties were directed to be shown as respondents to the writ petition and notice to show cause against the writ petition was issued to them. This Court also directed the Labour Commissioner, Jammu to visit the site of the Salal Hydro Electric Project and ascertain (i) whether there are any bonded labourers employed on this project and if so, to furnish their names; (ii) whether there are any migrant workmen who have come from other States (iii) what are the conditions in which the workers are living and (iv) whether the labour laws enacted for their benefit are being observed and implemented. Pursuant to this order made by the Court, the Labour Commissioner, Jammu visited the site of the Salal Hydro Electric Project and made an interim report on 11th October 1982 and this was followed by a final report dated 15th October 1982. The writ petition thereafter came up for hearing on 3rd November 1982 and on that date, the Court directed that since the report of the Labour Commissioner, Jammu disclosed that the Salal Hydro Electric Project was being carried out by the Government of India, the Union of India in the Labour Ministry as also the Chief Labour Commissioner (Central) may also be added as respondents to the writ petition. The Court also directed that the Union of India and the Chief Labour Commissioner (Central) should file their affidavits within two weeks from the date of the order dealing with the various averments made in the two reports of the Labour Commissioner, Jammu and particularly the final report made by him, since the final report disclosed prima facie that there were certain violations of labour laws committed by the Central Government and the contractors. The Court also directed that "the Union of India and the Chief Labour Commissioner (Central) shall ensure that hereafter minimum wage is paid directly by the Central Government or the contractors as the case may be, to the workmen employed by them without the intervention of any sub-contractor or jamadar or khatedar and without any deduction whatsoever except such as may be authorised statutorily. The reference to sub-contractors in this order will be confined only to those sub-contractors who have not been licensed under the Contract Labour (Regulation and Abolition) Act 1956, because if any such sub-contractors have been licenced, they would fall within the definition of Contractors and would therefore be liable for payment of minimum wage directly to the workers without any deduction. The Union of India and the Chief Labour Commissioner (Central) will also, in the meanwhile, ensure that Sections 16 to 19 of the Contract Labour (Regulation and Abolition) Act 1956 read with the relevant rules made under that Act are complied with, as the same are mandatory and the Central Government is the appropriate authority to enforce the provisions of those sections". Pursuant to this order made by the Court, an affidavit dated 14th December 1982 was made by one H.S. Raju Deputy Secretary to the Government of India, in the Ministry of Labour and it was filed in Court on behalf of the Union of India. The Court thereafter heard the writ petition on merits in the light of the two reports made by the Labour

Commissioner, Jammu and the affidavit filed by H.S. Raju on behalf of the Union of India and gave an interim judgment on 2nd March 1983. The Court pointed out in the interim judgment that the Salal Hydro Electric Project was a gigantic power project undertaken by the Government of India and it was entrusted by the Government of India to the National Hydro Electric Power Corporation for execution on agency basis. Certain portions of the work in connection with the project were being executed by the National Hydro Electric Power Corporation itself through workmen directly employed by it, while certain other portions of the work were entrusted to contractors, of whom principal four were Hindustan Construction Company Limited, Gammon India Limited, T.R. Gupta Private Limited and Asia Foundation Construction Company. The National Projects Construction Corporation Limited and M/s. S.C. Puri were also two other major contractors to whom portions of the work were entrusted, but their names were not mentioned to the Court at that time and hence they were not specifically referred to in the interim judgment. These various contractors were in their turn doing a part of the work entrusted to them through workmen directly employed by them while a part of the work had been allotted by them to sub-contractors described as "piece wagers". Now the Executive Engineers of the National Hydro Electric Power Corporation were licensed under the provisions of the Contract Labour (Regulation and Abolition) Act 1956 (hereinafter referred to as Contract Labour Act) and so were also the contractors to whom different portions of work had been entrusted for execution. But the sub-contractors or piece wagers to whom different portions of the work had been entrusted by the contractors did not hold any licence, though they fell within the definition of the word "Contractor" in Clause (c) of Section 2 of the Contract Labour Act. The Court therefore by its interim judgment directed the Central Government as the enforcing authority to take immediate steps for ensuring that the sub-contractors or piece wagers do not execute any portion of the project work without obtaining a licence under Section 12 sub-section (1), and carry out their obligations under Sections 16 to 21 read with Rules 41 to 62 of the Contract Labour (Regulation and Abolition) Central Rules, 1971, (hereinafter referred to as the Contract Labour Central Rules). The Court pointed out in the interim judgment that though the National Hydro Electric Power Corporation had provided canteens and rest rooms to its workmen as required by Sections 16 and 17 of the Contract Labour Act and Rules 41 to 50 of the Contract Labour Central Rules, the contractors and piece wagers or sub-contractors had not provided such canteens and rest rooms in breach of their obligations under these provisions nor were adequate washing facilities provided at work sites, though there was clearly an obligation on the contractors as also on the piece-wagers or sub-contractors to do so under Clause (c) of Section 18 read with Rule 57. The Court, therefore, directed the Central Government "to take immediate steps for ensuring that canteens, rest rooms and washing facilities are provided by the contractors and the piece-wagers or sub-contractors to the workmen employed by them in accordance with the requirements of Sections 16, 17 and 18 Clause (c) read with Rules 41 to 50 and 57". Since it appeared from the final report of the Labour Commissioner, Jammu that some minors were found to have been employed on the project site, the Court directed that in compliance with the requirements of Article 24 of the Constitution no child below the age of 14 years should be allowed to be employed in the work of the project. It was also pointed out in the interim judgment that the Central Government should take care to see that necessary facilities for schooling were provided to the children of construction workers, whenever any construction project was taken up which was likely to last for some time. The Court accepted the conclusion set out in the final report of the Labour Commissioner, Jammu that there was hardly any irregularity in so far as payment of wages to the workmen employed by the National Hydro Electric Power Corporation and the contractors was concerned but observed that the final report showed that in case of workmen employed by the piece-wagers or sub-contractors, payment of wages was made directly only to those workmen who were employed individually and to other workmen, like Oriya labourers who were employed in groups, wages were paid through khatedars and in this latter case, there were complaints of deductions by khatedars on account of advances made to the workmen, messing charges etc. The Court, therefore, proceeded to give a direction in the interim judgment that so far as the workmen employed by the piece-wagers or sub-contractors were concerned, wages should be paid to them directly without the intervention of any khatedars and without making any deductions except those authorised by, statute and such payment of wages should be made in the presence of an authorised representative of the Central Government or the National Hydro Electric Power Corporation. The Court also accepted the validity of the complaint made on behalf of the workmen that overtime wages earned by the workmen were not received by them in their entirety and almost 50% was taken away by khatedars and that weekly off days with wages were also not being allowed to them by the piece-wagers or sub-contractors. The Court, therefore, directed that close and searching inspections must be carried out by the Inspectorate staff with regular frequency and such inspections must be detailed and through, for then only it would be possible to ensure that every payment of wages, whether normal wages or overtime wages, is made directly to the workmen without any deductions in the presence of an authorised representative of the Central Government or the National Hydro Electric Power Corporation. The Court pointed out that the final report of the Labour Commissioner, Jammu showed that the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 (hereinafter referred to as Inter-State Migrant Workmen Act) were not being implemented at all and the workmen were denied many of the benefits and advantages provided under that Act even though it had come into force on 2nd October 1980 and the Rules made under that Act had also been brought into force with effect from the same date and consequently, the Court directed the Central Government to take immediate steps for enforcement of the provisions of the Act and the Rules made under it in regard to Inter-State migrant workmen employed in the project work. These were the detailed directions given by the Court in its interim judgment for compliance by the various authorities.

2. The Central Government immediately, with a view to securing compliance with the various directions given by the Court in the interim judgment, issued a Circular dated 22nd March 1983 to all the Engineers-Incharge of the project who were principal employers as also to all the contractors and sub-contractors or piece-wagers directing immediate compliance with the following directions :

> 1. That no child below the age of 14 years is employed by any contractor/sub-contractor on any work place in the Project. In case any child labourer is engaged by any contractor/sub-contractor immediate orders for their disengagement should be issued

forthwith and a report furnished to the undersigned.

2. That every workmen employed by the contractor/sub-contractor should be given a compulsory weekly off with wages and a compliance report is furnished forthwith.

3. That all the contract labour employed by your contractor/sub-contractors (Piece Wagers) should be paid their wages @ Rs. 10/- per day in presence of the authorised representative nominated by you to witness and verify the payments. Any payment, not made in presence of such a representative and not certified by him will not be reckoned as an authentic payment.

4. Ordinarily no workmen employed by the contractor/sub-contractors be put to work on over time, but in case of exigencies for working on over time, the workman should be paid at the rate of double the ordinary rate of wages, in presence of your authorised representatives.

5. The Engineer-in-Charge (Principal Employers) and the representative nominated by them for witnessing the payments should ensure the payment of wages on account of over time put in by the workmen engaged by the contractors/sub-contractors in time and in full directly to the concerned workmen without any unauthorised deduction whatsoever.

6. The Engineer-in-Charge (Principal Employers) should immediately direct the contractors/sub-contractors to supplement the existing number of latrines & urinals by constructing additional seats wherever required and to provide sufficient number of rest rooms so as to meet the requirement of Section 17 and 18 of the Contract Labour (R & A) Act 1970. In case the contractors/sub-contractors fail to provide the same within one week, the Engineer-in-Charge (Principal Employers) should take immediate steps to provide the same in accordance with Section 20 of the Contract Labour (R & A) Act, 1970 and recover the amount so incurred from the contractors/sub-contractors.

7. That all the facilities provided under Section 16 of the Inter-State Migrant Workmen Act, 1979 are provided to the Contract/Inter-State Migrant Workmen as already instructed vide this office No. P & A/P-IV/100 (CL)/82/58176-236 dated 2.12.1982.

8. That every Inter-State Migrant workmen is paid displacement allowance at the time of his recruitment and the journey fare in accordance with Section 14 & 15 of the Inter-State Migrant Workmen Act, 1979.

The Central Government also addressed a letter dated 22nd March 1983 instructing the Manager of the National Hydro Electric Power Corporation to ensure that the above directions were carried out by the National Hydro Electric Power Corporation and the contractors and sub-contractors or piece-wagers. This letter pointed out that the Engineers-in-Charge of the National Hydro Electric Power Corporation were already registered under the Contract Labour Act and pursuant to the directions given by the Court in its interim judgment, they had made applications for registration as principal employers under the Inter-State Migrant Workmen Act and so far as the contractors were concerned, they held licence under Section 12 sub-section (1) of the Contract Labour Act, and had also applied for licence under section 8 of the Inter-State Migrant Workmen Act but since the sub-contractors or piece wagers were without any licence under section 12 sub-section (1) of the

Contract Labour Act and section 8 of the Inter-State Migrant Workmen Act, they were directed to immediately proceed to apply for such licence before 31st March 1983. The Central Government pointed out that the National Hydro Electric Power Corporation as also Hindustan Construction Company Limited and Gammon India Limited had already provided canteen facilities at work places and these canteen facilities were available not only for the workmen employed by them but also for the workmen employed by the contractors and the sub-contractors or piece wagers. But even so the Central Government instructed the other contractors as also sub-contractors or piece wagers to provide additional canteens. The Central Government also stated in this letter that the contractors had already been directed by the respective principal employers to provide rest room facilities by 30th April 1983. So far as drinking water facilities were concerned, it was pointed out by the Central Government in this letter that arrangements for sufficient supply of drinking water had already been made at work places "both by the project authorities as well as by the main contractors". The Central Government observed in this letter that a few latrines and urinals had already been provided by the major contractors for the use of the workmen employed by them but there was scope for providing additional latrines and urinals and the contractors had accordingly been instructed to increase the number of existing latrines and urinals. This letter reiterated that the Engineers-in-Charge had already issued instructions to the contractors and the sub-contractors or piece wagers to provide all the facilities stipulated under the Contract Labour Act "with a warning that in the event of their failure the same shall be provided at their cost by the principal employers themselves". The Central Government also pointed out in this letter that instructions had already been issued to the contractors and the sub-contractors or piece wagers that wages must be paid directly to the workmen in the presence of an authorised representative of the Central Government or the National Hydro Electric Power Corporation and if that was not done, the amount of the wages would be deducted from the amount payable by the National Hydro Electric Power Corporation to the contractors and the sub-contractors or piece wagers and so also in regard to overtime wages which must be paid at double the rate of ordinary wages. Now formerly wages were being paid to the workmen at the rate of Rs. 9/- per day but as a result of a suggestion made by the Court at an earlier stage of these proceedings the daily rate of wages was increased from Rs. 9/- to Rs. 10/- with effect from 1st December 1982 and this fact was also recited in the letter addressed by the Central Government. The Central Government also reiterated that instructions had already been issued prohibiting employment of children below the age of 14 years and the Engineers-in-Charge as also the contractors and the sub-contractors or piece wagers had been directed to provide to the workmen compulsory weekly off day with wages. The annexures to the letter gave particulars of the Oriya Dadan labour employed directly by the contractors as also by the sub-contractors or piece wagers as on 21st March 1983 and these annexures showed that 156 Oriya Dadan workmen were employed by the major contractors while 1130 Oriya Dadan workmen were employed by the sub-contractors or piece wagers. The annexures also gave particulars of the non-Oriya workmen employed by the contractors as well as the sub-contractors or piece wagers as on 21st March 1983 and these particulars showed that 1124 Bihari workmen and 2004 other workmen were so employed. The Manager of the National Hydro Electric Power Corporation in his turn issued a letter dated 23rd March 1983 passing on these directions to the contractors instructing them to take immediate action within a period of 7 days. These directions were substantially carried out by the contractors and they intimated to their respective principal employers that their sub-contractors or piece wagers had already applied for licence under section 12 sub-section (1) of the Contract Labour Act and those sub-contractors or piece wagers to whom the provisions of the Inter-State Migrant Workmen Act were attracted had also applied for licence under section 8 of that Act and that so far as the other amenities and facilities required to be provided under these two statutes were concerned, they were by and large provided and some deficiencies in providing these welfare amenities were being set right. What may be termed as compliance reports were submitted by the Hindustan Construction Company Limited, Asia Foundation and Construction Company, National Projects Construction Corporation Limited and M/s. S.C. Puri and they were annexed to an application filed in Court by the National Hydro Electric Power Corporation for being added as a respondent to the writ petition. The National Hydro Electric Power Corporation pointed out in the application that immediately after the interim judgment of the Court, an internal committee was constituted for ensuring compliance with the various directions given by the Court in so far as they related to the National Hydro Electric Power Corporation and this committee "visited the Salal Hydro Electric Project and after detailed discussions at the level of the General Manager with the various contractors and officers of the project etc. detailed instructions were issued for ensuring compliance with the directions" given by the Court. The application also gave in a tabulated form a statement showing compliance with the various directions given by the Court supported by copies of the various documents to which we have just referred. It is not necessary to set out in detail the facts showing compliance with the various directions given by the Court in its interim judgment, but suffice it to state that it is clear from the documents and statements produced by the National Hydro Electric Power Corporation that these directions have been substantially complied with by the National Hydro Electric Power Corporation as also by the contractors and sub-contractors or piece wagers.

3. The writ petition thereafter came up for hearing on 6th May, 1983 alongwith the application of the National Hydro Electric Power Corporation for being impleaded as a respondent to the writ petition. The Court after hearing the parties made an order on the same day directing that the National Hydro Electric Power Corporation should be added as a respondent of the writ petition and that the National Hydro Electric Power Corporation should file an affidavit on or before 18th July, 1983 stating as to what further steps they had taken and were proposing to take "for the purpose of effective implementation of the labour laws". Kulbhushan Raina, Assistant Manager (Personnel) Salal Hydro Electric Project thereafter in pursuance of the order made by the Court, filed a further affidavit on 10th July, 1983 stating that pass-books printed in the prescribed manner had been supplied to the contractors and the sub-contractors or piece wagers for issuing the same to individual Inter-State Migrant workmen as required by sub-section (6) of Section 12 of the Inter-State Migrant Workmen Act and that so far as the 6 major contractors were concerned, two of them namely M/s Asia Foundation and Construction Company and M/s S.C. Puri had already completed their work and wound up their establishment and out of the remaining four major contractors, T.R. Gupta Private Limited and National Projects Construction

Corporation Limited had confirmed payment of displacement allowance to the Inter-State Migrant workmen but the other two major contractors, namely, Hindustan Construction Company Limited and Gammon India Limited had raised doubts about the applicability of the Inter-State Migrant Workmen Act to the workmen employed by them since according to them the workmen employed bv them including the Oriya workmen were engaged through the local employment exchange and were not brought from their home States as contemplated in that Act. But even so, stated these two contractors, they had instructed their sub-contractors or piece wagers to apply for licence under section 8 of the Inter State Migrant Workmen Act and they were paying to their workmen travelling expenses and journey allowance. Kulbhushan Raina stated in his affidavit that despite this contention raised by Hindustan Construction Company Limited and Gammon India Limited, the National Hydro Power Corporation had deducted Rs. 10000/- and Rs. 50000/- respectively from payments due to Hindustan Construction Company Limited and Gammon India Limited to cover payments in respect of displacement allowance. It was also pointed out by Kulbhushan Raina on oath that all Engineers-in-Charge as also all contractors and sub contractors or piece wagers had obtained "registration certificates - licences under the Contract Labour Act as well as under the Inter-State Migrant Workmen Act" and that all facilities required to be given to workmen under these two statutes were being provided to them. Kulbhushan Raina also averred in his affidavit that over-time wager at double the rate of ordinary wages were being regularly paid by the contractors and the sub-contractors or piece wagers in the presence of authorised representative of the principal employers as well in the presence of the Central Labour Enforcement officers and he further added in paragraph 8 of the affidavit:

> 8. All the contractors and sub-contractors have confirmed that they have now provided rest-rooms for the use of their respective contract labour in accordance with the directions/orders given by the Management of Principal employers. Sufficient number of latrines/urinals, washing and bathing points and clean workers colonies have been provided at various work sites by contractors as confirmed by Principal employers. In addition to canteens provided by the contractors at different work places, the management of principal employer has also provided canteen facilities open for all workmen categories also at projects where the food on subsidised rates on no profit no loss basis and a full breakfast costs only Rs. 1.25 and a full meal costs only Rs. 2/-. Canteens are opened by the Management and are open for every body whether a workmen or an officer of the project.

Kulbhushan Raina also thereafter filed a further affidavit on 3rd October, 1983 enclosing a chart showing compliance with the various directions given by the Court in its interim judgment. He also filed alongwith his affidavit a number of affidavits made by contractors such as National Projects Construction Corporation Limited, Gammon India Limited, Hindustan Construction Company Limited and T.R. Gupta Private Limited and their sub-contractors or piece wagers. These affidavits alongwith the affidavit of Kulbhushan Raina clearly show that the various directions given by the Court in its interim judgment have been complied with and that the provisions of the Contract Labour Act, Inter-State Migrant Workmen Act and the Minimum Wages Act are being observed by the National Hydro Electric Power Corporation as also by the contractors and the sub-contractors or piece wagers employed by them. We may point out that on an application made by the petitioner we directed Gammon India Limited and M/s. Gopi Nath Samanta a firm working as sub-contractors or piece wagers to inform the Court as to whether wages were being paid by them to the workmen at the same rate at which they were being paid by the principal employers, namely, National Hydro Electric Power Corporation and accordingly, R.D. Chopra on behalf of Gammon India Limited and Gopi Nath Samanta filed affidavits stating that they were complying with the provisions of the labour laws and were paying wages to the workmen at the prescribed minimum rate of Rs. 10/- per day.

4. We are satisfied on the material placed before us that the National Hydro Electric Power Corporation as also the contractors and the sub-contractors or piece wagers are now complying with the provisions of the Contract Labour Act, Inter-State Migrant Workmen Act and the Minimum Wages Act and the welfare amenities required to be provided under these statutes are being made available to the workmen employed on the Salal Hydro Electric Project. But even so, we would direct the Central Government to tighten up its inspection machinery and to ensure that close and detailed inspections are carried out by fairly senior inspection staff at frequent intervals, because unless there is constant vigilant scrutiny, the observance of labour laws which the Court has been able to secure as a result of its judicial intervention, may again become slack and the construction workers who constitute by and large an unorganised sector of the labour force may not be able to bring such non-observance of labour laws to the notice of the Court.

5. The writ petition will therefore stand disposed of in terms of this judgment. We are indeed grateful to Mr. Govind Mukhoty for the valuable assistance which he has rendered to us in this case. We want to express our sense of appreciation of the sincerity and thoroughness with which he has argued this case before us on behalf of the poor unorganised construction workers. We would in the circumstances direct the Government of India to pay to Mr. Govind Mukhoty a sum of Rs. 5,000/- by way of costs of the writ petition.

SCALE (PIL) 1981-97 1697
NEERAJA CHAUDHARY *Petitioner*
VS
STATE OF M.P. *Respondent*
CORAM: P.N. BHAGWATI AND AMARENDRA NATH SEN, JJ.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — REHABILITATION — Directions given.

Referred: Bandhua Mukti Morcha vs Union of India & Ors [1983(2) SCALE 1151]

Bhagwati, J.— This is yet another case which illustrates forcibly what we have said on many an occasion that it is not enough merely to identify and release bonded labourers but it is equally, perhaps more, important that after identification and release, they must be rehabilitated, because without rehabilitation, they would be driven by poverty, helplessness and despair into serfdom once again. Poverty and destitution

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Judgment dated May 8, 1984 in W.P. (Crl.) No. 1263 of 1982. [1984(1) SCALE 874] are almost perennial features of Indian rural life for large numbers of unfortunate ill-starred humans in this country and it would be nothing short of cruelty and heartlessness to identify and release bonded labourers merely to throw them at the mercy of the existing social and economic system which denies to them even the basic necessities of life such as food, shelter and clothing. It is obvious that poverty is a curse inflicted on large masses of people by our malfunctioning socio-economic structure and it has the disastrous effect of corroding the soul and sapping the moral fibre of a human being by robbing him of all basic human dignity and destroying in him the higher values and finer susceptibilities which go to make up this wonderful creation of God upon earth, namely, man. It does not mean mere inability to buy the basic necessities of life but it goes much deeper; it deprives a man of all opportunities of education and advancement and increases a thousand fold his vulnerability to misfortunes which come to him all too often and which he is not able to withstand on account of lack of social and material resources. We, who have not experienced poverty and hunger, want and destitution, talk platitudinously of freedom and liberty but these words have no meaning for a person who has not even a square meal per day, hardly a roof over his head and scarcely one piece of cloth to cover his shame. What use are 'identification' and 'release' to bonded labourers if after attaining their so-called freedom from bondage to a master they are consigned to a life of another bondage, namely, bondage to hunger and starvation where they have nothing to hope for - not even anything to die for - and they do not know whether they will be able to secure even a morsel of food to fill the hungry stomachs of their starving children. What would they prize more: freedom and liberty with hunger and destitution staring them in the face or some food to satisfy their hunger and the hunger of their near and dear ones, even at the cost of freedom and liberty? The answer is obvious. It is therefore imperative that neither the Government nor the Court should be content with merely securing identification and release of bonded labourers but every effort must be made by them to see that the freed bonded labourers are properly and suitably rehabilitated after identification and release.

2. This issue of rehabilitation of freed bonded labourers arises squarely in the present writ petition. The writ petition is based upon a letter dated 20th September, 1982 addressed to one of the Judges of this Court by the petitioner who is Civil Rights Correspondent of Statesman a leading newspaper in the country. This letter was directed to be treated as a writ petition but for the sake of completeness, before notice was issued to the respondent, Mr. Govind Mukhoty, learned advocate who was good enough to accede to the request of the Court to appear on behalf of the petitioner, filed a regular writ petition in substitution of this letter and it is that writ petition which is now being disposed of by us. The petitioner averred in the writ petition that about 135 bonded labourers who were working in the stone quarries in Faridabad had been released from bondage by an order made by this Court in the first week of March, 1982 since they were found to be bonded labourers within the meaning of the Bonded Labour System (Abolition) Act, 1976 and on release, they had been brought back to their respective villages in Bilaspur District of the State of Madhya Pradesh with a promise of rehabilitation by the Chief Minister of that State. But, said the petitioner, when she visited three villages, namely, Kunda, Pandharia and Bhairavapura in Mungeli Taluk of Bilaspur District in September 1982 with a view to ascertaining whether or not the process of rehabilitation as promised by the Chief Minister had commenced, she found that most of the released bonded labourers who belonged to these three villages had not yet been rehabilitated though about six months had passed since their release and they were living almost on the verge of starvation. It may be pointed out that out of 135 released bonded labourers, about 75 belonged to these three villages and 45 out of them were from village Kunda. It is also significant to note that all the 75 released bonded labourers from these three villages belonged to Scheduled Castes. The petitioner annexed to the writ petition a copy of an article written by her and published in the issue of Statesman dated 14th September, 1982 in which she set out how these released bonded labourers were without land and work, facing immense hardship and near-starvation in the absence of any rehabilitation assistance provided by the State Government. This article written by the petitioner setting out what she personally observed in the course of her visit to the three villages, namely, Kunda, Pandharia and Bhairavpura discloses a distressing state of affairs which shows how utterly, callous and indifferent can the administrative machinery of the State Government be towards the plight of the released bonded labourers despite assurance of rehabilitation given by the Chief Minister. It seems that once these freed bonded labourers were brought back to their villages, the administration of the State Government thought they had discharged their duty and then they conveniently forgot about the existence of these unfortunate specimen of humanity. The fate which be fell these released bonded labourers after their repatriation to their respective villages is perhaps symptomate of what is happening to bonded labourers in other parts of the country. In the first place, very little attention is paid towards identification and release of bonded labourers and even if they are freed, there is complete neglect of rehabilitation programme for them with the result that from slavery they go back to starvation. That is why when the petitioner interviewed some of these bonded labourers they said that they would rather go back to the stone quarries for work than starve and added: "we might have been killed there, but we are also dying here". It is interesting to find that according to the information gathered by the petitioner, more than 100 years ago 90% of the land was owned by Satnamis while now they own less than 50%. The petitioner pointed out in the writ petition that some of these released bonded labourers owned land at one time but they had lost it to the Sahukars, that is, the money lenders and some of them had pledged their jewellery and other small belongings in order to raise money for their subsistence. Some of these released bonded labourers were, according to the petitioner, going to the Bhadora forest to get bamboo and wood which they would sell and they had to walk 10 k.ms. carrying head loads weighing 20 kgs. and more which would fetch them upto Rs. 10 to Rs. 15, though, if they were caught by the forest guards or police men in this process, they would have to part with three or four days' earnings. The petitioner said that there were various schemes of the Government for the purpose of providing rehabilitation assistance to freed bonded labourers and there were also the Intergrated Rural Development Plan and the 20 Point Economic Programme but "the benefits had been cornered by those with political influence and the well-to-do in the villages". The petitioner urged in the writ petition that it was the obligation of the State Government to ensure rehabilitation of freed bonded labourers under the provisions of the Bonded Labour System (Abolition) Act, 1976 and its failure to provide such rehabilitation assistance amounted to violation of the fundamental right of the freed bonded labourers under Article 21 of the Constitution. The petitioner therefore prayed for a direction to the State Government to take steps for the economic and social rehabilitation of the freed bonded labourers who were released as a result of the order made by this Court in the first week of March, 1982 and who were residing in various villages in Bilaspur District.

3. When this writ petition came up for preliminary hearing before the Court, notice was issued to the State Government and the State Government was directed to "inform the Court at the next hearing of the writ petition as to whether they have framed any scheme or schemes for rehabilitation of bonded labourers, whether any vigilance committees have been constituted in the District of Bilaspur and whether any and if so what steps have been taken or are being taken for rehabilitating 135 workers who were released by the order made by this Court in the first week of March 1982 and who are now living in the three villages, namely, Kunda, Pandharia and Bhairavpura in Mungeli Taluk of Bilaspur District". Pursuant to this direction given by the Court, the State Government filed the counter-affidavit of one G.R. Mahajan, Asstt. Labour Commissioner at Bilaspur setting out what steps had been taken and were being taken by the State Government for identification, release and rehabilitation of bonded labourers. The State Government pointed out that "very often vested interests veil successfully the status of bonded labourers and thus obstruct the process of identification; the labourers themselves are not educated enough to come forward and lodge a complaint; they appear to be reconciled themselves to their fate" and that is why there is a wide gap between legal discharge of bonded labourers and their factual liberation. The State Government observed that all District Magistrates in the State were conferred powers under Section 10 of the Act and powers of Judicial Magistrate Ist Class for the trial of offences under Section 21 of the Act were also conferred on all District Magistrates and Sub-Divisional Magistrates and repeated instructions were issued to the District Magistrates to identify bonded labourers. The State Government also pointed out that Vigilance Committees had been constituted by it in all the 44 districts of the State as required by Section 13 of the Act. The State Government also set out the composition of the Vigilance Committees for the Bilaspur District as also of the Vigilance Committee for the sub-divisions of Bilaspur, Jangjir, Katghora, Sakti and Mungeli. These vigilance committees, according to the particulars given by the State Government, included three non-government nominees, but the performance of these vigilance committees appeared to be rather dismal, because on the admission of the State Government itself the number of bonded labourers identified, freed and rehabilitated in the whole of the State could not but be regarded as ridiculously low. The figures given by the State Government in the affidavit of G.R. Mahajan showed that in all 1531 bonded labourers were identified in the year 1978, 75 in the year 1980, 57 in the year 1981 and 114 in the year 1982 and even in regard to these freed bonded labourers, the State Government was not in a position to state definitely that they had been rehabilitated but all that the State Government could say was that "steps were taken for their rehabilitation". It is absured to suggest that in the whole of the State there were only about 1800 bonded labourers and they were all freed in the course of four years, leaving no more bonded labourers in the State. It is significant to note that apart from the present writ petition, several other cases have come before this Court from Madhya Pradesh by way of public interest litigation initiated by social action groups engaged in the task of identification, release and rehabilitation of bonded labourers and the reports of the

Commissioners, appointed by this Court in some of those cases have clearly shown that there is a sizable number of bonded labourers in the State who have yet to be identified, released and rehabilitated. But the absurdly insignificant figures of bonded labourers identified and released by the State Administration so far are clearly indicative of the indifference and inadequacy of the State Administration in securing identification, release and rehabilitation of bonded labourers within the State. Perhaps this indifference and inadequacy of the State Administration arises from the fact that the State Government is not willing to admit the existence of bonded labour within its territory lest it might affect its image and moreover the officers of the State Administration seem to be taking the view that unless a workman is able to show that he is forced to provide labour to the employer in consideration of an advance or for any other economic consideration received by him, he cannot be regarded as a bonded labourer within the meaning of the definition of that term in the Bonded Labour System (Abolition) Act, 1956. But having regard to the decision of this Court in *Bandhua Mukti Morcha vs Union of India & Ors.*, 1983(2) SCALE 1151, it is clear that this view on which the officers of the State Administration seem to be relying for the purpose of disputing the existence of bonded labour is erroneous. We have pointed out in our judgment in Bandhua Mukti Morcha's case (supra) that:

> "It would be cruel to insist that a bonded labourer in order to derive the benefits of this social welfare legislation, should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to the rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book. It is now statistically established that most of bonded labourers are members of Scheduled Castes and Scheduled Tribes or other backward classes and ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, unless he has received some advance or other economic consideration from the employer and under the pretext of not having returned such advance or other economic consideration he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants. Therefore, whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act. The State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourers on the plea that though the concerned labourers may be providing forced labour, the State Government does not owe any obligation

> to them unless and until they show in an appropriate legal proceeding conducted according to the rules of adversary system of justice, that they are bonded labourers."

This is the test which has to be applied for the purpose of determining whether a workman is a bonded labourer or not and we would therefore direct the State Government to apply this test through out its territory for the purpose of ascertaining whether there are any bonded labourers or not and if so how large is their number. Whenever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer unless the employer or the State Government is in a position to prove otherwise by rebutting such presumption.

4. The State Government also pointed out in the affidavit of G.R. Mahajan that instructions had been issued to all the Collectors and Commissioners to give widest possible publicity to the evil of the bonded labour system and the cooperation of the members of the Legislative Assembly was also sought in this vital task of identification, release and rehabilitation of bonded labourers and all the panchayats in the State were also asked to cooperate with the State Government in this behalf. The State Government observed in the affidavit that it had also announced an award of Rs. 25/- to those who give information about the existence of bonded labour. It is difficult to believe that the existence of bonded labour can be discovered and the evil of bonded labour can be wiped out by relying solely on action to be taken by the members of the Legislative Assembly or the bureaucracy or even the panchayats though their help must certainly be sought & taken. The Commissioners and Collectors have multifarious duties to attend and even if they are anxious to help in eradication of the vice of bonded labour system, which we are sure they are, they would not find time to make any personal inquiry or investigation but they would have to rely on their subordinate officers such as tehsildars and patwaris and at many places, the patwaris and tehsildars being either in sympathy with the exploiting class or lacking in social commitment or indifferent to the misery and suffering of the poor and the down-trodden, the task of identification, release and rehabilitation of bonded labour through the official machinery would be very difficult of achievement. So also the members of the Legislative Assembly, though extremely sincere and well meaning and having the welfare of the poor at heart, would, barring perhaps in a few cases, hardly have time to carry out any inquiry or investigation for the purpose of identification and release of bonded labourers. The panchayats also, dominated as they some times are by vested interests, and having regard to their mode of functioning, may not be very effective in this task. What is really necessary is to involve social action groups operating at the grass root level in the task of identification and release of bonded labourers. We do not think much useful purpose will be served by asking petty officials of the Revenue Department to go from house to house with a view to ascertaining whether there are any bonded labourers or not. We had some time back a case before us where pursuant to a direction given by the Collector as a result of an order made by this Court, the tehsildar went to the villages in question and sitting on a dias with the landlords by his side, he started enquiring of the labourers whether they were bonded or not and when the labourers, obviously inhibited and terrified by the presence of the landlords, said that they were not bonded but they were working freely and voluntarily, he made a report to the Collector that there were no bonded labourers. It is only through social action groups working amongst the poor that we shall be able to discover the existence of bonded labour and we shall be able to identify and release them. There are fortunately in our country a large number of such dedicated social action groups — young men and women inspired by idealism and moved by a passionate and burning zeal to help their fellow beings — whose services can be utilised for identification, release and rehabilitation of bonded labourers. We would strongly urge upon the State Government to include the representatives of such social action groups in the vigilance committees and to give them full support and cooperation. These social action groups may appear to be unorthodox and unconventional and their actions may be marked by a sense of militancy, but they alone will be able to deliver the goods and it is high time that the State Government should start taking their assistance instead of looking at them askance and distrusting them. The vested interests would undoubtedly be against such social action groups which are trying to organise the poor and the oppressed and would try to attack and destroy such social action groups with all the resources at their disposal including filing of false cases and even physical assaults but the State Administration should not allow itself to be dominated or influenced by the vested interests and under the guise of maintenance of law and order, harass and oppress the disadvantaged sections of the community whom such social action groups are trying to organise with a view to making them strong and self-reliant and capable of fighting for their rights through the process of law. We would therefore direct the State Government to include in the Vigilance Committee for Bilaspur District, as also in the Vigilance Committees of the various sub-divisions in that district, representatives of one or more of the following social action groups which are operating in one or the other part of that district:

(1) Shri Sita Ram Kashyap, Advocate,
"Lahar", Janajgeer Tehsil, Distt: Bilsapur.

(2) Shri Chandran, "Lahar"; Near Korba,
Bhainsa Munda, District Bilaspur.

(3) Shri J.R. Sachdev,
Prayog Samaj Sevi Sanstha,
P.O. Tilda,
Neora,
District Rampur - 493 114
Madhya Pradesh.

We expect the State Government to carry out this direction within one month from today. We would also direct the State Government to take immediate action for identification and release of bonded labourers, whenever any representative of these social action groups, whether on the vigilance committee or not, points out to the Collector District Magistrate or the Deputy Collector that there is existence of bonded labour at a particular place and whenever any officer of the District Administration goes to such place for identification and release of bonded labour on the basis of the information given by such representative of the social action group, he shall take such representative with him and a copy of the report made by him shall be handed over immediately to such representative of the social action group. We may make it clear that this direction given by us should not be interpreted to mean that the representatives of only those social action groups which are mentioned by us should be taken on the vigilance committees, but it will be open to the State Government to include in the vigilance committees representatives of any other social action groups which the State Government may think fit, having regard to the nature and quality of the work done by them at the grass root level amongst the have-nots and the handicapped.

5. It appears that a review of the action taken by the State Government for the purpose of identification, release and rehabilitation of bonded labourers was undertaken in April, 1981 and a detailed survey was carried out in the districts of Satna, Panna, Bastar, Rajgarh and Jabalpur. The learned counsel appearing on behalf of the State Government has filed a summary of conclusions and recommendations of this review and this summary frankly and boldly exposes the inadequacies of the State Administration in regard to the implementation of the programme of identification, release and rehabilitation of bonded labourers and makes constructive suggestions and recommendations for remedying the existing state of affairs. We hope and trust that these suggestions and recommendations will be immediately carried out by the State Government and the entire machinery for identification, release and rehabilitation of bonded labourers will be streamlined in the light of these suggestions and recommendations. We do not think that it would be right for us to discuss these suggestions and recommendations because they involve administrative policy making but there are a few observations we would like to make arising out of some of these suggestions and recommendations. One of the suggestions and recommendations made by the survey team is that: "the district and sub-divisional level vigilance committees should be *reorganised and activated* and their meetings should be more frequent than now". This suggestion or recommendation clearly supports what we have said in the preceding paragraphs of this judgment, namely, that the vigilance committees as they exist today are not effective and they need to be reorganised and activated. We have no doubt that the direction given by us to include representatives of social action groups will go a long way towards activising the functioning of the vigilance committees. It is also necessary that officers who are posted at different levels to deal with the problems of bonded labour including their identification, release and rehabilitation should be properly trained and sensitised so that they may feel a sense of involvement with the misery and suffering of the poor and they may carry out their functions with total dedication to the cause of removal of poverty and in a manner which will inspire the confidence of the weaker sections of the community including the bonded labour. Every officer who is placed in charge of identification, release and rehabilitation of bonded labour should be made fully conscious of his great responsibility and he should be imbued with a sense of purpose and dedication which are necessary if this important task is to be accomplished successfully. It is also essential that there should be constant check and supervision over the activities of the officers charged with the task of securing identification, release and rehabilitation of bonded labourers. We have fortunately in our country quite a large number of socially committed officers who, inspired by idealism with their enthusiasm undiminished, minds untramelled and hearts unpolluted by all kinds of pressures, are prepared to brave opposition and some times even danger, in order to help the deprived and vulnerable sections of the community. Such officers must be encouraged and their efforts appreciated so that they may become exemplary models for other officers to follow. The summary of conclusions and recommendations in paragraph 7 suggests that "an intensive survey of the area which has been traditionally prone to the system of debt bondage should be undertaken by the Revenue Department with the help of the available field agencies for the identification of bonded labourers". We would introduce a slight modification to this recommendation and we would suggest that an intensive survey of the areas which have been traditionally prone to the system of debt bondage should undoubtedly be undertaken but that should be done by the vigilance committees with the assistance of social action groups operating in such areas and that is perhaps what the survey team had in mind when they said that the help of "available field agencies" should be taken by the Revenue Department. We find ourselves wholly in agreement with the suggestions and recommendations set out in paragraphs 9 to 17 of the summary of conclusions and recommendations. We have no doubt that if these suggestions and recommendations are sincerely and speedily implemented by the State Government, it would go a long way towards rehabilitation of the released bonded labourers. We have plenty of good schemes in our country but the real difficulty lies in securing their proper and effective implementation. The evaluation of the implementation of these schemes must be target-oriented and not expenditure-oriented. What is necessary is that the benefits of the expenditure must reach the masses and particularly the lowest amongst the low and the weakest among the weak, because they constitute the target groups sought to be benefited and if the benefits do not reach them, it is futile for any government to say that it has expended such large amount. We would therefore urge upon the State Government to immediately take up the implementation of the suggestions and recommendations made by the survey team in its report and inform the Court by an affidavit to be filed by a responsible officer on or before 31st July, 1984 as to what concrete steps have been taken towards implementation of these suggestions and recommendations and how many bonded labourers have been identified and freed and how many of them have been rehabilitated and in what manner. It is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated. The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution.

6. It is obvious from the writ petition as also from the affidavits filed in these proceedings that the large majority of 135 bonded labourers released as a result of the order made by this Court in the first week of March 1982 have not yet been rehabilitated though more than 18 months have passed. We wonder how these out-castes of humanity, forgotten by their fellow being and neglected, by their government, must be eking out their daily existence: how they must be feeding their hungry bellies of their children and how they must be covering the shame of their wives. These unfortunate human beings for whom life is a long unceasing rigel with no resources except perhaps a for lorn hope, who cannot even cry for help because they know that it will be a cry in the wilderness which no one will hear and who drag on their earthly existence in the hope that one day death will relieve them from their misery and suffering, today ask the legislature, the executive and the judiciary, "What have you done for us; have we not a right to live with human dignity and share with all of you the fruits of freedom and development or are we consigned to a life of slavery and starvation where we see before our eyes the emaciated bodies of our children with hollow cheaks, sunken eyes and shrivelled bodies withering away and dying? We would therefore direct the State Government to provide rehabilitative assistance to these 135 freed bonded labourers within one month from today. They have waited too long: they cannot wait any longer. What kind of rehabilitative assistance should be provided and what would be appropriate for the family of a particular freed bonded labourer would have to be decided by the vigilance committee and such rehabilitative assistance shall be provided by the State Government in the presence of a representative of one of the social action groups to which we have specifically referred in the earlier part of this judgment. The Collector/District Magistrate Bilaspur will give sufficient notice to such representative so that he can remain present at the time when rehabilitative assistance is provided to these 135 freed bonded labourers. The State Government will file an affidavit of a responsible officer stating how and in what manner the State Administration has provided rehabilitative assistance to these 135 freed bonded labourers and which representative of the social action groups present at the time when such rehabilitative assistance was given. Such affidavit shall be filed on or before 15th July, 1984.

7. The writ petition will be placed on board on 6th August, 1984 for consideration of the affidavits which may be filed by the State Government pursuant to the directions given by us in this judgment. The State Government will pay to the petitioner costs of the writ petition quantified at Rs. 5,000. We must in the end express our deep gratitude to Mr. Govind Mukhoty who has so ably, with a sense of social commitment and dedication, presented the case on behalf of the petitioner and assisted the Court in arriving at its decision.

Amarendra Nath Sen, J.— I have had the benefit of reading the judgment of my learned brother Bhagwati, J. The facts have been set out in the judgment of my learned brother. Though I am in general agreement with the directions given and orders proposed by my learned brother. I wish to make my own observations.

9. These orders have been passed and directions have been given so that responsibility and legal obligations of the respondent in the matter of properly rehabilitating bonded labourers freed from bondage may be duly discharged. Bonded labour system had been one of the vile systems which had been degenerating human beings for years. Appreciating the unjust, immoral and pernicious nature of this system, our country which values human dignity and guarantees personal freedom had passed appropriate legislation to do away with this system. The Bonded Labour System (Abolition) Act, 1976, abolishing bonded labour system and making various other provisions including provisions for the rehabilitation of bonded labourers was enacted. It is indeed sad and unfortunate that though this piece of welfare legislation was passed years ago, no proper steps were being taken for implementation of the same. Various social organisation and individuals working for the upliftment of the poor, weak and the down-trodden had brought to the notice of the Court the pitiable plight in very many parts of our country of the bonded labourers who were being exploited and held in bondage notwithstanding the passing of the Bonded Labour System (Abolition) Act, 1976. Suitable action had been taken by the Court for freeing bonded labourers from bondage and restoring to them the liberty guaranteed under the constitution in all appropriate cases. Action taken by the Court had the effect of creating an awareness not only in the minds of the sufferers but had also helped to an extent in removing the innertia and lethargy in the administration which started taking appropriate steps for implementation of the provisions of this eminently beneficial social welfare legislation, either on the basis of the directions given by the Court or on its own initiative.

10. It has to be appreciated that mere passing of welfare legislation for the

upliftment of the downtrodden, the meek and the weak is by itself not sufficient, though undoubtedly the legislation is the first step in the right direction. What is really important is that every law enacted, particularly welfare legislation for the benefit of the weaker section of the people, must be implemented in the proper spirit for achieving the noble object for which such legislation is passed. Implementing the law has, necessarily to be effected through human agencies. Unfortunately, frailties of human nature and degeneration of human character often add to existing problems instead of solving them.

11. The provisions of the Bonded Labour System (Abolition) Act, 1976 must be implemented effectively and properly in terms of the provisions of the Act, if the desired objective which the Act seeks to achieve, is to be attained. The Legislature in its wisdom very aptly appreciated that mere release of the bonded labourers from bondage without making appropriate arrangements for his rehabilitation will serve no useful purpose and may even create a very real problem as to livelihood of the labourer so set free and accordingly the legislation made suitable provision for the rehabilitation of the bonded labourer. If any bonded labourer is only freed from his bondage and is set at liberty, he will in all probability have to slide back into bondage again to keep his body and soul together. Freedom from bondage without effective rehabilitation after such freedom will indeed be of no consequence and in the absence of proper arrangement for such rehabilitation being made, the entire purpose of the Act will be frusterated and the vice of the bonded labour system which the legislature thought it fit to abolish in the larger interest not only of our country, but also of humanity as a whole will continue to perpetuate its evil existence.

12. The real grievance of the Petitioner in this writ petition based on personal knowledge is with regard to non-implementation of the legislative provisions made for the rehabilitation of the bonded labourers after they had been freed. A sad and woeful tale is narrated in the writ petition about the plight of the bonded labourers set free pursuant to the orders of this Court for not taking effective measures enjoined by law for their rehabilitation. It becomes the duty of the Court to see that the legislative provisions regarding their rehabilitation are properly implemented and these poor and miserable persons are allowed to enjoy the benefit which the Law and the Constitution of the land afford to them.

13. With these observations, I express my agreement with the directions given and orders proposed by my learned brother in the judgment.

SCALE (PIL) 1981-97 1707
M/S INDIAN MINERALS MINING CO. *Petitioner in CMP*
IN RE :
RURAL LITIGATION & ENTITLEMENT
KENDRA, DEHRADUN & ORS. *Petitioners In WP.*
VS
STATE OF U.P. & ORS. *Respondents*
CORAM: P.N. BHAGWATI, AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.

Order dated August 23, 1984 in C.M.P. No. 312 of 1984 in W.P. No. 8209 of 1983. [1984(2) SCALE 230]

PUBLIC INTEREST LITIGATION — ENVIRONMENT — MINES — Directions issued for removal of minerals already excavated.

1. Indian Minerals Mining Co., which holds a mining lease for marble and limestone within the Mussorie belt of the Dehradun District from the U.P. Government has applied to this Court for permission to remove and appropriate the minerals already excavated by it from the leasehold area. The Committee appointed by this Court by order dated January 5, 1984, has reported that in this mine operations have been stopped with effect from August 20, 1983, on the orders of this Court and at the site of the mine 178.35 metric tonne of marble and 42 metric tonne of limestone were lying on January 31, 1984 when the Committee inspected the mine. When quarrying was prohibited, restriction was also imposed on transport of the minerals. The lessee has applied for permission for removal of the stock faced at the site on the ground that long storage would adversely affect the material to its prejudice and keeping watch on the stock involves heavy financial burden.

2. Mr. Ramamurthi for the petitioner and Mr. Sibal for the State of U.P. have opposed the application. Mr. Ramamurthi's objection is based on the remarks of the Committee to the following effect :

> "It appeared to the Committee that some recent excavations had taken place which had led to the accumulation of additional material".

and relying on this, he contended that the lessee should not be allowed to remove and appropriate materials excavated in violation of the Court's order. He maintained that an application for action for contempt has been filed. That application, if already made, has to be disposed of on its merit. We are of the view that the removal of the material excavated should not be detained on that score. Mr. Sibal objected to removal of the stock of marble on the plea that there was no lease in respect of marble. Mr. Lekhi for the lessee has produced a copy of the lease deed of the year 1980 which covers marble also. The objection on behalf of the State of U.P. has therefore no force.

3. Even if removal and appropriation of the materials to the extent indicated above is to be permitted, we are of the view that it must be strictly regulated and it has to be ensured that under the pretext of removal of the stock further mining is not done. With a view to ensuring that the removal is limited to the quantities specified by the Committee and that no further mining or excavation is done by the lessee, we appoint a Committee consisting of the Director of Geology (Mines) posted at Dehradun and the Additional District Magistrate of Dehradun. This Committee shall ensure strict compliance of our direction in the matter of removal of the stock referred to above. The entire operation has to be completed within 15 days commencing from August 27, 1984. The lessee shall intimate to the Director of Geology (Mines) on behalf of the Committee its programme of removal and the operation shall be carried out under the control and supervision of the Committee. The loading of the trucks shall take place in the presence of a representative of the committee not below the rank of the Deputy Director of Geology (Mines) and a register shall be caused to be maintained by the Committee in which shall be entered the numbers of the trucks and the quantity of material removed by each truck. The necessary police assistance shall be afforded by the Superintendent of Police, Dehradun, as and when requisitioned.

4. A report shall be furnished to this Court by the Committee within one week of completion of the operation. Copies of this order shall be forwarded immediately by the Registry to the Director of Geology (Mines), the Additional District Magistrate and the Superintendent of Police and copies shall also be supplied to Mr. Lekhi for the lessee, Mr. Ramamurthi for the petitioner and Mr. Sibal for the State of U.P.

SCALE (PIL) 1981-97 1709

ASHOK KUMAR MITTAL VOICE (VOLUNTARY ORGANISATION IN THE INTEREST OF CONSUMERS EDUCATION) *Petitioner*

VS

MARUTI UDYOG LTD. & ANR. *Respondents*

CORAM: V.D. TULZAPURKAR AND A.P. SEN, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — PUBLIC SECTOR CORPORATIONS — MARUTI — "Manufacturer Directors Discretionary Quota" — Directions given.

1. The matters are adjourned for three weeks to enable the learned Attorney General to furnish particulars as regards the plaint made in item (b) of Annexure 'E' at page 35 in W.P. No. 11716/84. We are also of the view that the guidelines will have to be scrutinized further and some sort of restrictions may have to be put regarding the transferability of the vehicles, which are allotted on discretionary quota basis. We, therefore, direct that in the light of the above observations, there will be no further allotment of cars hereafter out of the "Manufacturer Directors Discretionary Quota".

Order dated September 17, 1984 in W.P. (C) No. 588/84 and W.P. No. 11716/84 (for prel. hearing with Appn. for stay & Office Report). [1984(2) SCALE 382]

SCALE (PIL) 1981-97 1709

ASHOK KUMAR MITTAL VOICE (VOLUNTARY ORGANISATION IN THE INTEREST OF CONSUMERS EDUCATION) *Petitioner*

VS

MARUTI UDYOG LTD. & ANR. *Respondents*

CORAM: V.D. TULZAPURKAR AND A.P. SEN, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — PUBLIC SECTOR CORPORATIONS — MARUTI — "Manufacturer Directors Discretionary Quota" — Further directions given.

Order dated September 24, 1984 in W.P. (C) No. 588/84 and W.P. No. 11716/84. [1984(2) SCALE 401]

1. Apropos our last order dated 17th September 1984, counsel for respondents sought clarification whether the words "there will be no further allotment of cars hereafter" would cover past allotments. On inquiry we are informed that there are 150 allotments made prior to 17.9.1984 in respect of which delivery has not yet been made. In our view, the number is quite large and unless particulars of these 150 allotments together with the reasons for the allotment and the criteria applied in each case are furnished and scrutinised by us it will not be possible to permit the delivery of the cars in their case. The respondents should therefore file the said particulars by 8th October, 1984.

2. We are informed that by way of giving particulars as regards the point made in item (b) of Annexure 'E' at page 35 in W.P. No. 11716 of 1984 the respondents have merely given the total number of allotments made from out of the manufacturer/directors discretionary quota. The respondents are directed to file the particulars with regard to the total number of applications received requesting allotment from the said discretionary quota, particulars of such of the applicants who have been allotted cars from that quota together with the reasons for such allotments and the criteria applied in each case as also particulars of those applicants who have been refused the allotment from such quota together with reasons for such refusal.

3. All such particulars should be filed on or before 8th October, 1984 so that on the next adjourned date, namely, 12th October, 1984, the matter could be proceeded with as directed earlier.

SCALE (PIL) 1981-97 1710

FORWARD CONSTRUCTION CO. & ORS. *Appellants*

VS

PRABHAT MANDAL (REGD.), ANDHERI & ORS. *Respondents*

CORAM: R.S. PATHAK, O. CHINNAPPA REDDY AND R.B. MISRA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — TOWN PLANNING — MAHARASHTRA REGIONAL TOWN PLANNING ACT, 1967 — ANDHERI TOWN PLANING SCHEME r.w. Exp. IV to S. 11, CPC. — Construction of a Bus Depot Complex for commercial purpose — Allowing the appeals, Held,

A. The High Court was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. (Para 20).

B. If commercial activities are to be pin-pointed in a commercial zone and for that purpose the Municipal Corporation takes a step to provide accommodation for commercial purposes it cannot be said that the property of the Corporation was being acquired or held for purposes other than the purposes of the Act. (Para 32).

Referred: S.P. Gupta vs Union of India [(1982) 2 S.C.R. 365 = 1981(4) SCALE 1974]

Judgment dated November 26, 1985 in C.A. No. 2310 of 1984 and C.A. No. 2311 of 1984 (M.C.G.B. v Prabhat Mandal with S.L.P. (C) No. 7404 of 1984 (Prabhat Mandal v M.C.G.B.) [1985(2) SCALE 1123]

Misra, J.— The present connected appeals and the special leave petition to appeal are sequel to a public interest litigation and are directed against the judgment of the High Court of Bombay dated 14th November 1983 allowing a petition under Article 226 of the Constitution.

2. Public interest litigation is a comparatively recent concept of litigation but it occupies an important status in the new regime of public law in different legal systems. By its very nature the concept of public interest litigation is radically different from that of traditional private litigation. Ordinary traditional litigation is essentially of an adversary character where there is a dispute between the two litigating parties, one making the claim or seeking relief against the other and the other opposing such claim or resisting such relief. While public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another, as happens in the case of ordinary litigation, it is intended to prosecute and vindicate public interest which demands that violation of constitutional or legal rights of a large number of people, who are poor, ignorant or socially and economically in disadvantaged position, should not go unnoticed, unredressed for that would be destructive of the rule of law. Rule of law does not mean protection to a fortunate few or that it should be allowed to be prosecuted by vested interests for protecting and upholding the status-quo. The poor too have a civil and political right. Rule of standing evolved by Anglo Saxon jurisprudence that only a person wronged can sue for judicial redress may not hold good in the present setting. Therefore, new strategy has to be evolved so that justice become easily available to the lowly and the lost. Law is not a closed shop. Even under the old system it was permissible for the next friend to move the court on behalf of a minor or a person under disability or a person under detention or in restraint. Public interest litigation seeks to further relax the rule on locus standi. This Court in *S.P. Gupta vs Union of India,* (1982) 2 S.C.R. 365, dealing with the question of public interest litigation observed ;

> "It may therefore now be taken as well established that where a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons".

The present is a typical case of public interest litigation and arises in the following circumstances :

3. The development plan for Bombay was sanctioned by the State Government on 8th August 1966 and the verified Andheri Town Planning Scheme framed under the Maharashtra Regional Town Planning Act, came into force, after the repeal of the Bombay Town Planning Act, with effect from 7th January, 1967 and the Scheme was finally sanctioned on 11th June 1970. Under the development plan final plot No. 14 was reserved for bus depot of the Bombay Electricity Supply and Transport Undertaking (hereinafter referred to as the 'BEST'), owned and run by the Bombay Municipal Corporation (hereinafter referred to as 'BMC').

4. The said plot originally belonged to one Amarsi and after a prolonged litigation the said land admeasuring 4657.10 sq. mtrs. was acquired under the provisions of the Land Acquisition Act, 1894 and the BMC through the BEST had to pay a sum of Rs. 35,00,000/- as compensation pursuant to the award given by an arbitrator appointed by consent of the parties and the BEST took possession of the same on 18th February, 1978.

5. It appears that the General Manager of the BEST Undertaking laid before the BEST Committee a proposal in his letter dated 4th August, 1981. In his opinion if the BEST provided only a bus depot on the said plot the total investment would be Rs. 45,00,000/- inclusive of the cost of the land and the return from the investment would be nothing except the rent from the canteen vendor. The General Manager, therefore, proposed to the said committee that if an additional investment of Rs. 50,00,000/- on the construction of two buildings was made, the BEST would get a return to the tune of Rs. 8,50,000/- per annum. He referred to the two buildings as 'A' and 'B' on the plan which was annexed with his letter. The 'A' building was to have five floors with the ground floor on stilts and building 'B' was to have a ground and two upper floors with a mezzanine floor and the first floor. Building 'B' was also partly to be on stilts to provide for car parking. The calculation made by the General Manager was on the footing that a carpet area of 22,500 sq ft. could be spared after meeting the needs of the BEST bus depot and that space could be let out for offices and show rooms etc. from which the BEST could expect an overall minimum rent of Rs. 3/- per Sq. ft. exclusive of taxes resulting in a net profit of Rs. 8.50 lacs per annum.

6. It, however, appears that the BEST Committee referred back the proposal of the 4th August 1981 to the General Manager and he, in the light of discussions with the members of the BEST Committee, put up two alternative proposals vide his letter dated 17th September, 1981. The salient features of the first proposal were that offers from builders were to be invited by public advertisements for construction of the entire complex as per BEST plans and specifications by the builder at his own cost which was estimated at Rs. 60.0 lacs. Under the said proposal the builder was to make his own arrangements for finance and materials including steel, cement etc. The proposal further indicated that as the builder's maximum investment would amount to Rs. 159.0 lacs he may in lieu thereof be given a right to dispose of the property to the users of his own choice. Under that proposal the builder was to make an annual payment to the BEST to cover repairs, maintenance and other costs. The builder making the highest payment was to be selected and the premium was put at the rate of Rs. 200/- to Rs. 250/- per sq. ft. of the available F.S.I. On that basis it was estimated that the floor space available being 39,592 sq. ft., at the rate of Rs. 200/- to Rs. 250/- per sq. ft. a sum between Rs. 79.0 lacs to Rs. 99.0 lacs could be received by BEST, in addition to making a full-fledged bus depot free of cost. The General Manager in the said letter, however, also pointed out the draw backs of his proposal and therefore an alternative suggestion was also made by him whereunder the BEST may invite offers directly from the prospective tenants for a period of 30 years at a time and after the expiry of 30 years the tenants were to have an option of renewal for a further period of 30 years but at a revised rate to be fixed by the BEST taking into consideration the prevailing market price. Under the alternative proposal a premium of Rs. 99.0 lacs was to be received directly from the tenants and after deducting the cost of the whole complex,

which was expected to be Rs. 60.0 lacs the BEST would get a net amount of Rs. 39.0 lacs in addition to the revenue of Rs. 8.46 lacs per annum by way of rent or compensation from the tenants.

7. The final proposal which, however, emerged as a result of discussion with the BEST Committee was the one contained in the letter of the General Manager to the BEST Committee dated 14th January 1982. Under this proposal the builder was to pay to the BEST non-refundable premium at the rate of Rs. 250/- per sq. ft. of 'FSI' allowed to be used. The builder was to construct at his cost two buildings including the bus depot, yard concreting, lighting etc. and hand them over free of cost to the BEST within two years after entering into the contract and the plans and specifications were to be given by the BEST. The builder was to recommend tenants for 23500 sq. ft. carpet area and the BEST was to grant lease to the tenants nominated by the builder subject to approval by the General Manager at the rate of Re. 1/- per sq. ft. of the carpet area. The lease was renewable for a further period of 30 years and that the rent was to be at the rate of Rs. 2/- per sq. ft. The user was to be such as was allowed under the development control rules. The builder was to pay the premium in two instalments, the first instalment of 50 per cent before signing the agreement and the remaining 50 per cent within 18 months after the first payment but before the completion of the project.

8. The effect of this proposal was that the BEST would on the one hand get a cash amount of Rs. 99.0 lacs in the form of non-refundable premium and on the other hand would not be required to make any capital expenditure for the construction of the project. A net income of Rs. 2.82 lacs per year for 30 years amounting to Rs. 84.60 lacs, and for the next 30 years at the rate of Rs. 5.64 lacs per year amounting to Rs. 169.20 lacs would be earned by the BEST. Under the said project the BMC or the BEST would gain in the first 60 years period about Rs. 412.0 lacs as against Rs. 159 lacs and would not be required to supply any cement for the project. This proposal was approved by the BEST Committee by its resolution dated 18th January, 1982.

9. The follow up proceedings started thereafter and an advertisement came to be published in the Times of India and various other newspapers on 10th February, 1982 inviting offers from the interested parties to develop the BEST property on certain terms and conditions contained in a document which could be obtained from the Engineer-in-Charge (Civil) of the BEST. In addition to the said advertisement in the newspapers, notices were also forwarded to 22 well-known builders out of whom 12 builders purchased the tender forms on payment of Rs. 1000/- each.

10. The parties hereinafter are referred to in accordance with their position in C.A. No. 2311 of 1984.

11. Pursuant to the advertisement and the said notices two tenders were received, one was sent by M/s. Forward Construction Co., respondent No. 7, a partnership firm, and the other by M/s. Deep Construction. As the tender of M/s. Forward Construction Co. was higher than that of M/s. Deep Construction it was accepted by the BEST Committee on 31st March 1982. The BEST Committee also recorded its approval to General Manager entering into the contract with the highest bidder for development of the BEST's property at Andheri. The approval further stated that the amount so earned would be used for constructing staff quarters. The possession of the plot was handed over to M/s. Forward Construction Company for the purpose of putting up the construction for and on behalf of the BEST on 18th April 1982.

12. It appears that soon after one Subhash Vasant Thakkar on 20th April, 1982 filed a petition in his capacity as a rate-payer in the High Court of Judicature at Bombay under Article 226 of the Constitution, being writ petition No. 921 of 1982. He challenged the right of the BEST to use the land for a purpose different from the one for which it had been reserved and designated under the development plan as well as the town planning scheme and that it had no right to use it for commercial purpose. He also challenged the right of the BEST to enter into a contract with the builder. The petition was dismissed by a learned Single Judge on 28th May, 1982 after having heard all parties concerned and after giving opportunity to file replies. The learned Judge found that the substantial portion of the acquired plot was being utilised for a purpose for which it was acquired and the commercial use to which the small portion was being put would substantially augment the coffers of the Corporation for the benefit of the public at large. The learned Judge also rejected the contention that the value charged by the BEST for allowing use of its property was grossly inadequate and that no sufficient publicity was given before inviting offers. The court after having rejected the various pleas taken by the petitioner in the case also observed that the petitioner was not an independent-minded citizen solely inspired by the laudable motive of protecting public interest but the allegations in the petition indicated that he had been set up by a disgruntled builder who purchased the tender document but did not give an offer. That matter was taken up in appeal but the Division Bench dismissed the same after hearing all the parties.

13. After the dismissal of the appeal the present respondents 1 to 6 in civil appeal No. 2311 filed a similar petition under Article 226 of the Constitution in the Bombay High Court which gives rise to the present appeals and the special leave petition seeking almost the same relief as was claimed in the earlier petition filed by Thakkar. The learned Single Judge summarily dismissed the writ petition by his order dated 23rd November, 1982.

14. The respondents Nos. 1 to 6 took up the matter in appeal. The Division Bench admitted the appeal and disposed of the same finally on the same day setting aside the order of the learned Single Judge. It admitted the writ petition and transferred the same to be finally disposed of by a Division Bench. The Division Bench eventually allowed the petition and issued a writ of mandamus directing appellants 1 to 4 in civil appeal No. 2311, their officers, subordinates, servants and agents not to use plot No. 14 in the Town Planning Scheme, Andheri No. 1 (2nd Variation) reserved for BEST bus depot for commercial purpose or for any purpose other than the purpose for which the said plot of land was reserved. The court, however, clarified that its decision did not prevent the planning authority, that is, the BMC, from taking such steps as it may be advised to have the plan modified in accordance with s. 37 of the said Act.

15. The appellants feeling aggrieved by the judgment of the High Court filed a detailed review petition mainly on the ground that the respondents 1 to 6 had not taken any plea based on regulation 3 of the Building Regulations and it was only during the course of arguments that this plea was advanced before the court and certain papers were filed before the court. The appellants had no opportunity to produce documents in rebuttal and it was only when the decision was given by the court that the appellants have been able to trace and collect a number of documents, which according to them have great bearing on the interpretation of the said building regulations contained in the Town Planning Scheme Andheri I (2nd Variation) finally sanctioned by the State Government on 17th July, 1976. They filed the following documents along with review petition :

1. Town Planning Scheme Andheri No. I (Final) which came into force on 15th November, 1919 vide Government notification No. GP-8388-A dated 7th October 1919 in the Bombay Government Gazette Part I No. 2404 dated 9th October, 1919.

2. Notification No. TPS-2963-30714-R dated 29th October 1963 issued by the State Government sanctioning the T.P. Scheme Andheri I (Ist Variation) (Final) with effect from 1st January, 1964.

3. The T.P. Scheme Andheri I (Ist Variation) containing Building Regulations which inter alia state that no plot within the area of the Scheme shall be permitted to be used for any purpose other than residential.

4. Resolution of the Bombay Municipal Corporation No. 539 dated 24th August 1967 declaring their intention under Section 92 read with Section 59(a) of the MRTP Act 1966 to make second variation Town Planning Scheme Andheri No. I with a view :

(a) to rectify the discrepancies in the areas of the plots, if any, to regularise the boundaries wherever necessary, and to make other consequential changes in the re-distribution of Valuation Statement;

(b) to change some of the residential and/or shopping plots into commercial plots as per final Development Plan;

(c) to make such other variation as deemed necessary, supplementary to, and consequential to the variations stated above.

5. Notification dated 6th September 1968 issued by the Municipal Commissioner for Greater Bombay informing the public that the Draft Variation Scheme for Andheri Town prepared and approved by the Corporation for publication under Resolution No. 399 of 19th August, 1968 was open for inspection and any person who had been affected by the draft variation scheme should communicate in writing to the Executive Engineer, Town Planning, any objection or suggestion within 30 days from the publication of the said notification.

6. Government notification in Urban Development, Public Health & Housing Department, TPS 2969/11752 dated 30th May 1970 sanctioning the draft scheme (2nd variation).

7. Notification dated 15th May 1973 issued by Shri K.S. Keswani, Arbitrator, announcing that he had done all that was required of him regarding Town Planning Scheme, Andheri I (2nd Variation) (Final) under Section 72(3) of the MRTP Act 1966 and the rules framed under the Bombay Town Planning Act 1954 and had drawn up the Final Scheme as required under section 72(3)(xviii) of the said Act.

8. Decision given by the Tribunal of Appeals presided by Shri G.H. Guttal dated 7.4.1975 regarding Town Planning Scheme, Andheri I (2nd Variation) (Final) wherein paragraph No. 16 deals with Appeal No. 3 relating to Final Plot No. 14.

9. Notice dated 16th January 1976 issued by Shri K.L. Keswani, Arbitrator, announcing that he had drawn up the Final Scheme, Andheri No. I (2nd Variation) as required under section 72(3)(xviii) read with section 82(2) of the MRTP Act, 1966.

10. Final Scheme drawn by Shri K.S. Keswani, Arbitrator on 16th January 1976 showing that the Scheme involved 27 plots which had fallen in Commercial Zone under the Final Development Plan and the Original Plot Nos. 1 to 27 remained as Final Plot Nos. 1 to 27.

11. Notification dated 17th July 1976

issued by the Government of Maharashtra sanctioning Town Planning Scheme, Andheri No. I (2nd Variation) (Final) published in the Maharashtra Government Gazette Extraordinary dated 17th July 1976.

These documents according to the appellants proved that :

(a) The Town Planning Scheme Andheri No. I (Final) known as the principal scheme, came into force on 15th November 1919.

(b) The Bombay Municipal Corporation declared its intention to vary that scheme on 18th November 1957 to enable the plot holders in the scheme area to effect development on par with the area outside the scheme wherein the built up area upto 1/3rd of the plot and the structures for ground and two upper floors were permissible and also to provide underground sewers and storm water drains.

(c) The Town Planning Scheme, Andheri No. I (Ist Variation) (Final) was sanctioned by the Government on 29th October, 1963 with effect from 1st January, 1964. Under the Building Regulations made under the said scheme, Regulation No. 6 stated that no plot within the area of the scheme shall be permitted to be used for any purpose other than residential, provided that professional offices of doctors, lawyers, engineers and the like as also buildings required for educational recreational, religious or cultural purposes, community centres, dispensaries, hospitals and any other buildings the use of which is, in the opinion of the Local Authority, not likely to affect detrimentally the residential character of the locality, may be permitted. In short, all the plots in the area of the scheme were permitted to be used for residential purposes.

(d) Final Development Plan of 'K' Ward which includes Andheri came into force with effect from 8.8.1966 and the Development Control Rules for the entire Greater Bombay came into force from 9th February 1967. Under the Final Development Plan the plots which had been included in Town Planning Scheme Andheri No. 1 (Ist Variation) (Final) were included in 'Commercial Zone'.

In short, the entire purpose of varying the Town Planning Scheme Andheri No. 1 was to bring the scheme in conformity with the Development Plan.

16. The High Court, however, dismissed the review petition on 22nd December, 1983 by the following order :

> "Heard Mr. Singhvi. We have interpreted Regulation 3 and the proviso in its plain terms. The number of documents now produced do not effect the construction which we have placed on Regulation 3 and the proviso. Review Petition rejected".

17. All the contesting parties have now come up in appeal against the judgment of the High Court dated 14th November, 1983 to the extent it went against them. The result is that all the questions which were before the High Court are again up for consideration by this Court.

18. To start with, the respondents 1 to 6 had taken a plea that the Municipai Commissioner had not obtained the approval of the Bombay Municipal Corporation under r. 4(a)(i) of the Development Control Rules for change of user. The counsel for the BMC, however, informed the court that he had already sought the sanction of the Bombay Municipal Corporation and the proposal would soon come up before the Corporation for discussion and on that ground he sought an adjournment of the case to enable the Corporation to approve the said proposal. On 6th January 1983 the BMC by its resolution accorded sanction under r.4(a)(i) of the Development Control Rules for the change of present user of BEST bus depot to a combined user of BEST bus depot with commercial offices proposed by the Municipal Commissioner. The court thereafter allowed respondents 1 to 6 to amend their writ petition as the plea taken by them had lost its force after the sanction.

19. The second question for consideration is whether the present writ petition is barred by *res judicata.* This plea has been negatived by the High Court for two reasons : (1) that in the earlier writ petition the validity of the permission granted under r. 4(a)(i) of the Development Control Rules was not in issue and (2) that the earlier writ petition filed by Shri Thakkar was not a bona fide one is as much as he was put up by some disgruntled builder, namely, M/s. Western Builders.

20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as *res judicata* as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to s. 11 C.P.C. provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principal underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.

21. The second reason given by the High Court, however, holds good. Explanation VI to s. 11 provides :

> "Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section be deemed to claim under the persons so litigating."

But it is only when the conditions of Explanation VI are satisfied that a decision in the litigation will bind all persons interested in the right litigated and the onus of proving the want of bona fides in respect of the previous litigation is on the party seeking to avoid the decision. The words "public right" have been added in Explanation VI in view of the new s. 91 C.P.C. and to prevent multiplicity of litigation in respect of public right. In view of Explanation VI it cannot be disputed that s. 11 applies to public interest litigation as well but it must be proved that the previous litigation was the public interest litigation not by way of a private grievance. It has to be a bona fide litigation in respect of a right which is common and is agitated in common with others.

22. The High Court in the earlier writ petition had recorded a finding that it was not a bona fide litigation and that Shri Thakkar, the petitioner in that case, had been put up by M/s. Western Builders. This finding excludes the application of s. 11 C.P.C. in the present case. The possibility of litigation to foreclose any further enquiry into a matter in which an enquiry is necessary in the interest of public cannot be overruled. In view of the finding of the High Court that the previous writ petition was not a bona fide one, the present writ petition would not be barred by s. 11 of the C.P.C. and the High Court was justified in so holding but not because of the first reason but because of the second reason.

23. This leads us to the third point that a valuable public property was being disposed of at a gross undervalue in a highly secretive manner only to oblige respondent No.7. This plea in our opinion was rightly negatived by the High Court. Consequent upon the resolution of 18th January 1982 approving the proposal of the General Manager, an advertisement came to be published in Times of India and various other newspapers on 10th February 1982 inviting offers from the interested parties to develop BEST's property on certain terms and conditions contained in a document which could be obtained from the Engineer-in-Chief (Civil) in the BEST. In addition to the said advertisement in the newspapers notices were also forwarded to 22 well-known builders out of whom 12 builders purchased the tender forms on payment of Rs. 1000/- each. In view of these circumstances it cannot be said that the whole thing was done in a secretive manner.

24. Pursuant to the advertisement and the said notices two tenders were received out of which one was sent by respondent 7 which is a partnership firm and another by Deep Construction. The tender of respondent 7 being higher than that of Deep Construction, was accepted by the BEST Committee on 31st March 1982. In the facts and circumstances of this case as established, it cannot be said that the property of the Corporation has been disposed of for a wholly inadequate consideration.

25. The fourth point raised is that the plot No. 14 acquired for a public purpose of constructing a bus station was being used for a commercial purpose which was not permissible. This plea had been rejected by the High Court holding that a very substantial portion of the acquired plot was being utilised for the purpose for which it was acquired and the commercial use to which a small portion was being put would substantially augment the coffers of the Corporation for the benefit of the public at large without spending any further amount on the development. It cannot be said that the plot has been used for a different purpose from the one for which it has been acquired. All that can be said is that a part of the plot is being used for constructing two buildings which would augment the income of B.M.C. that could be utilised for the public purpose. The plot is being substantially used for the purpose for which it had been acquired. The additional use of the property will not make the use of the property for altogether a different purpose.

26. Public interest law activities at times champion one public interest which clashes with another public interest thus benefiting one segment of public at another's expense. As disclosed in the earlier part of the judgment, the General Manager had sent up a proposal whereunder a part of plot No. 14 was to be used for construction of two buildings that will augment the income of the Corporation which could be used for the purpose of construction of staff quarters. The purpose for which the plot was earmarked remains intact, that is, for the construction of bus depot. In our opinion the other public interest sought to be achieved by the construction of the two buildings in addition to the bus depot is equally important.

27. This leads us to the question of mala fides of the officers of the Corporation in accepting the tender of M/s. Forward Construction. This plea was based on various circumstances which had been taken into consideration by the High Court and repelled. Indeed, no specific plea had been taken against any officer of the Corporation to show that the officers were acting with any ulterior or improper motive. All the same, the High

Court did consider this plea and rejected the same for cogent reasons with which we agree and it is not necessary to repeat them here.

28. As a second limb to the plea of mala fides it was contended that even assuming that no mental guilt on the part of the officers of the Corporation is proved, the transaction suffered from legal mala fides or mala fides in law in as much as the transaction was outside the Bombay Corporation Act as it was intended to make financial gain.

29. The avowed function of the Corporation is the improvement of Greater Bombay. Section 61 of the Municipal Corporation Act enumerates the obligatory and discretionary duties of the Corporation. Section 61(t) refer to the improvement of Greater Bombay. Section 63 (k) authorises the Corporation to take any measures to promote public safety, health, convenience. The plot in question admittedly lies in a commercial zone and if any facilities are given to the people of that locality providing for commercial offices those facilities would go towards the improvement of Bombay. It cannot, therefore, be said that the transaction was outside the Bombay Corporation Act.

30. The resolution of the BEST Committee dated 18th January 1982 approving the proposal of the General Manager dated 14th January 1982 clearly provided that the amount of non-refundable premium payable by the builder at the rate of Rs. 250/- per sq. ft. of F.S.I. would be utilised for the construction of the Undertaking's quarters and tenements under hire-purchase scheme. The BEST had, therefore, clearly earmarked the nonrefundable premium for the purpose of construction of quarters and tenements under the hire-purchase scheme.

31. Section 87 of the Bombay Municipal Corporation Act provides that the Corporation shall for the purposes of this Act have powers to acquire and hold movable and immovable property whether within or without the limits of Greater Bombay. As the property is being utilised for augmentation of the revenues of the Corporation it is sought to be contended that it is not for the purpose of the Act.

32. The mere fact that the Corporation was to make a gain of the non-refundable premium did not mean that that was the only purpose which was in view. The purpose obviously was the best utilisation of the available space. If in a Commercial Zone the Corporation was able to make available accommodation for commercial purposes we do not see why such a venture cannot be one either for the purpose of promoting public safety, convenience or in the nature of facilities being made available as a part of the improvement of the city. If commercial activities are to be pin-pointed in a commercial zone and for that purpose the Municipal Corporation takes a step to provide accommodation for commercial purposes it cannot be said that the property of the Corporation was being acquired or held for purposes other than the purposes of the Act.

33. This leads us to the last but not the least in importance the plea based on Building Regulation No. 3. In order to appreciate the contention it will be proper to read the regulation :

> "The user of the following final plots will be as under, as per the sanctioned development plan :
>
> | *Final Plot No.* | *User* |
> |---|---|
> | 10 | Public Wall |
> | 12 | Part Parking Lot |
> | 14 | BEST Bus Depot |
>
> Provided that the above users may be changed by the Local Authority after modification of the Development Plan".

It was this plea which prevailed with the High Court and the writ petition was allowed only on this score. The precise contention of the counsel for the respondents was that Building Regulation No. 3 will override the Development Control Rules for Greater

Bombay. Rule 3 of the Development Control Rules for Greater Bombay reads :

> "3. (a)(i) All development work shall conform to the respective provisions made under these Rules. If there is a conflict between the requirement of these rules and the requirements of bye-laws in force the requirements of these rules shall prevail;
>
> Provided however that in respect of areas included in a finally sanctioned Town Planning Scheme, the scheme regulations shall prevail if there is a conflict between the requirements of these rules and of the Scheme regulations.
>
> (ii) The development work when completed shall not be used for any purpose except for the sanctioned use or such use as can be permitted under these rules.
>
> (b) Change of use; No building or premises shall be changed or converted to a use not in conformity with the provisions of these rules".

If the contention of the respondents that proviso to Building Regulation No. 3 overrides the Development Control Rules is accepted then the user of the plot as per sanctioned development plan can be changed by the local authority after modification of the development plan and as in the instant case there has been no modification of the development plan the change of user cannot be permitted. This is the crucial point on which the writ petition has been allowed. The other pleas taken by the respondents, as stated above, had been negatived by the High Court. What the proviso to Building Regulation No. 3 requires is that the change of user of the sanctioned plan can be made only after the modification of the development plan. The key word in this regulation is 'change'. What does the word 'change' mean? Collins English Dictionary gives the following meaning to the word 'change':

> "1. to make or become different, alter, 2. to replace with or exchange for another, 3. to transform or convert, 4. to give or receive something in return, interchange, 5. to give or receive money in exchange for the equivalent sum in small denomination or different currency, 6. to remove or replace the coverings of, 7. to put on other clothes, 8. to pass from one phase to the following one, 9. to alight from and board another, 10. a variation, deviation or modification, 11. the substitution of one thing for another, exchange, 12, anything that is or may be substituted for something else, 13. a different or fresh set".

The meaning of the word 'change' in the Oxford Dictionary reads:

> "1. take another instead of, 2. resign, get rid of, 3. give or get money change for, 4. put on different clothes, 5. go from one to another, 6. pass to different owner, 7. make or become different 8. take new position in argument, 9. adopt new plan or opinion".

So, the general meaning of the word 'change' in the two dictionaries is "to make or become different, to transform or convert". If the user was to be completely or substantially changed only then the prior modification of the development plan was necessary. But in the instant case the user of the plot has not been changed. It has been used for a bus depot combined with a commercial use to argument the income of the Corporation for public purpose. In this view of the connotation of the word 'change' the proviso has no application to the present case and the High Court in our opinion was not quite justified in allowing the writ petition only on the basis of the proviso to Building Regulation No. 3.

34. It may further be pointed out even at the cost of repetition that this plea had not been taken in the original writ petition nor in the amended writ petition, and had been taken for the first time in the course of argument. The appellants had no opportunity to produce documents in rebuttal and it was only when the judgment was pronounced that the appellants could lay their hands on certain notifications and certain other documents to show that that was a minor adjustment and could be rectified. Therefore, the appellants filed a review petition along with those documents which has been enumerated in the earlier part of the judgment. The court described those papers as irrelevant for the purpose of construction of the proviso to building Regulation No. 3. But in our opinion those documents would go a long way to solve the problem.

35. For the foregoing discussion, the appeals must succeed. They are accordingly allowed, the judgment and order dated 14th November, 1983 of the Division Bench of the High Court are set aside, and the judgment and order dated 23rd November 1982 of the learned Single Judge of the High Court dismissing the writ petition are restored. The special leave petition filed by Prabhat Mandal and others is dismissed. In the circumstances of the case, however, the parties shall bear their own costs.

SCALE (PIL) 1981-97 1721

ASHOK KUMAR MITTAL *Petitioner*

VS

MARUTI UDYOG LTD & ANR. *Respondents*

CORAM: V.D. TULZAPURKAR AND A.P. SEN, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — PUBLIC SECTOR CORPORATIONS — MARUTI — "Manufacturer's Discretionary Quota" — Further directions given.

1. Mr. Soli J. Sorabjee, learned counsel for the petitioners makes a statement that the general stay which is operative may be vacated in respect of:-

(1) persons holding public office and have paid full amount against allotment;

(2) those whose names appear in the list of error cases and who have made full payment; and

(3) sale of cars outside India to enable the Company to earn foreign exchange.

2. We accordingly modify the general stay in the aforesaid terms and this will be without prejudice to the rights and contentions of both the parties.

3. The allotments and deliveries made pursuant to the aforesaid modification of the general stay will be debited to the manufacturers' 5% discretionary quota. Such deliveries shall be subject to the condition that cars shall not be alienated or transfered by the allottees for a period of 3 years. This last condition will not apply in the case of sale of cars outside India.

4. The Writ Petitions are directed to be listed on 23rd of July 1985.

Order dated May 9, 1985 in W.P. No. 588/84 with Petition No. 11716/84 (of VOICE for impleading party,.) [1985(1) SCALE 1262]

SCALE (PIL) 1981-97 1722

ASHOK KUMAR MITTAL *Petitioner*

VS

MARUTI UDYOG LTD. & ANR. *Respondents*

CORAM: V.D. TULZAPURKAR AND A.P. SEN, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — PUBLIC SECTOR CORPORATIONS — MARUTI — Manufacturer's Quota — Guide-lines for allotment of Cars out of this quota.

1. We have heard Mr. Soli, J. Sorabjee, Mr. Prashant Bhushan and Mr. R. Karanjawala for the petitioners and the learned Attorney General on behalf of the respondents. Various submissions were made on behalf of the parties. After considerable discussion of the various proposals and suggestions made by parties and after having given our anxious and deep consideration to the matter it is ordered that in public itnerest the following guidelines should regulate the allotment of Maruti Vehicles out of the manufactuers' quota of 5 per cent.

2. The allotment of Maruti vehicles out of the manufacturers' quota of five per cent will be made in favour of the following categories only :

(i) Any organisation/institution coming within the definition of 'State' under Article 12 of the Constitution of India.

(ii) Any hospital or recognised charitable organisation or educational institutions registered or incorporated under a statute or having recognition under Section 80-G of the Indian Income Tax Act 1961.

(iii) *Individuals*

(a) An individual suffering from physical handicap so as to render him incapable of using public transport would be eligible for allotment provided his income together with the income of his or her spouse or his or her guardian does not exceed Rs. 60,000/- per year.

(b) The President of India, Vice-President of India, Cabinet Ministers, Ministers of State in the Union Cabinet and Governors of State and Cabinet Ministers in State Governments, the Chairman of the Public Service Commission, the Chief Election Commissioner, the Auditor and Comptroller General of India and the Attorney General of India.

(c) The Speaker and the Deputy Speaker of the Lok Sabha, the Chairman and the Deputy Chairman of the Rajya Sabha, Speakers of States Legislative Assemblies, Chairpersons of State Legislative Councils, and Leaders of Opposition parties in Parliament and in the State Legislatures.

(d) The Chief Justice and other Judges of the Supreme Court and the Chief Justice and other Judges of the High Courts.

(e) Public servants not below the rank of Additional Secretary to the Government of India.

(f) Serving members of the Armed Forces not below the rank of Brigadier in the Army of equivalent rank in the Navy or the Air Force.

(g) Manufactures of component parts for utilisation in the manufacture of Maruti vehicles. The number of this category will be restricted to ten per year.

(h) Employees of Maruti Udyog Ltd., limited to fifty vehicles per year.

Order dated March 7, 1986 in W.P. (C) No. 588 of 1984 with C.W.P. No. 11716 of 1984 (VOICE v Maruti Udyog). [1986(1) SCALE 326]

(i) Individuals in recognition of their outstanding humanitarian services to the society or to the Nation. The number in this category will be restricted to ten per year.

(j) Individual cases of undue hardship on humanitarian grounds. The number in this category will be restricted to five per year.

IV. Error category i.e. individuals whose applications for regular allotment could not be registered on account of any genuine error.

3. The following conditions will be strictly observed in the allotment of vehicles to any organisation/institution, person or individual in any of the aforesaid categories:

(a) There will be no resale of the vehicle by the allottee for a period of three years. This condition will be inserted in the order of allotment issued in favour of the allottee. Maruti Udyog Ltd. will further obtain before giving delivery of the vehicle a written undertaking from the allottee that he will not sell the vehicle for a period of three years from the date of delivery.

(b) There will be no second allotment out of the manufacturers' quota to the same individual.

(c) In each of the aforesaid categories allotment, as far as possible, will be made on first come first served basis in accordance with the date of the receipt of the application for allotment out of the aforesaid manufactures' quota. In cases where more than one application is received on the same day from individuals in the same category, priority of allotment in such cases will be determined by draw of lots under proper supervision.

4. It is clarified that allotments made for military/para-military purposes and against firm export orders for supply outside of India, will not be included within 5% of the Manufacturer' quota.

5. These guidelines will be in force for a period of three years and will be subject to review taking into consideration the prevailing circumstances which may exist at that point of time.

6. In view of the afore said guidelines, we think, it is unnecessary for us to determine the various submissions and contentions raised on behalf of the parties which are however left open.

7. All general interim orders are vacated. However, deliveries made pursuant to our interim orders will stand.

8. Liberty to apply.

SCALE (PIL) 1981-97 1723

FOOTPATH DUKANDAR NEW LAJPAT RAI
MARKET PATRI UNION (REGD.) AND ORS. ETC. *Petitioners*

VS

M.C.D. & ORS. *Respondents*

CORAM: P.N. BHAGWATI. CJI., V. KHALID AND S. NATARAJAN, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 32 — STREET HAWKERS — New Lajpat Rai Market Street Hawkers — Further directions given.

Order dated September 29. 1986 in W.P (C) Nos. 700 & 264 of 1986. [1986(2) SCALE 711]

W.P. No. 264/86 :

1. The interim order made by this Court on 11.2.86 is confirmed with this modification that the petitioners will not carry on their business in front of the schools situated in this area during the period commencing one hour before the starting of the school and ending one hour after the school is closed for the day. The rest of the interim order made by us will continue.

W.P. No. 700/86:

2. We regret that though we have given several opportunities to the Municipal Corporation of Delhi to come forward with a scheme to enable to petitioners to carry on their hawking business. Municipal Corporation of Delhi has not yet come out with a scheme. We fail to understand why they have taken so much time to formulate the scheme under which the petitioners will not be deprived of their livelihood while at the same time there will be obstruction to the pedestrians and traffic at the points to which there is usually a lot of congestion. Mr. B.P. Maheshwari, learned counsel for the respondents requests for some more time to enable the Municipal Corporation of Delhi to formulate a proper scheme. We would, therefore, adjourn the writ petition to 21.10.86 in order to enable the respondents to come out with a scheme. We may make it clear that it will be the last adjournment we are granting and if within this period the scheme is not put forward by the Municipal Corporation of Delhi the Court may have no option left but to grant interim injunction against the Municipal Corporation of Delhi so as to enable the petitioners to carry on the hawking business at the place or places where they are carrying on such business. The interim order made by us earlier will continue until final disposal of the matter on 21.10.86.

3. In evening time when the petitioners will be at liberty to carry on their hawking business shall stand scattered from 7.30 a.m. to 5.30 p.m.

SCALE (PIL) 1981-97 1724

1) BANDHUA MUKTI MORCHA
2) MEHBOOB BATCHA *Petitioners*

VS

1) STATE OF TAMILNADU
2) STATE OF MADRAS *Respondents*

CORAM: P.N. BHAGWATI, CJI., V. KHALID AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — WEAKER SECTIONS — REHABILITATION — Rehabilitation of 157 families working in the Kodaikanal hills.

1. We are glad that as a result of these Writ Petitions and the various orders made from time to time in the Writ Petitions the Government of Tamilnadu has come forward with a scheme which has met with the approval of the Sub-Collector of Kodaikanal as well as of Shri Mehboob Batcha, Commissioner appointed by this Court. This scheme sets out various measures which are proposed to be taken by the State Government for rehabilitation of 157 families who were working in the Kodaikanal hills and for whose

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Order dated October 16, 1986 in W.P. No. 754/86 with W.P. No. 633/86. [1986(2) SCALE 712] benefit the present Writ Petitions have been brought. We have no doubt that the schemes will be implemented properly and effectively and several suggestions which have been made by the learned counsel appearing on behalf of the petitioners will be considered and to the extent found feasible they will be taken into account in implementing the scheme. With these observations the Writ Petitions will stand disposed of.

SCALE (PIL) 1981-97 1725
BANWASI SEVA ASHRAM *Petitioner*
VS
STATE OF U.P. AND ORS. *Respondents*
CORAM: P.N. BHAGWATI, CJI., AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — TRIBALS — ADIVASIS LIVING IN U.P. — Claim to land and related rights — Directions given.

1. On the basis of letter received from Banwasi Seva Ashram operating in the Mirzapur District this Writ Petition under Article 32 was registered. Grievance was made on several scores in that letter but ultimately the question that required detailed consideration was relating to the claim of the Adivasis living within Dudhi and Robertsganj Tehsils in the District of Mirzapur in Uttar Pradesh to land and related rights. The State Government declared a part of these jungle lands in the two Tehsil as reserved forest as provided under section 20 of the Indian Forest Act, 1927 and in regard to the other areas notification under section 4 of the Act was made and proceedings for final declaration of those areas also as reserved forests were undertaken. It is common knowledge that the Adivasis and other backward people living within the jungle used the forest area as their habitat. They had raised several villages within these two Tehsils and for generations had been using the jungles around for collecting the requirements for their livelihood-fruits, vegetables, fodder, flowers, timber, animals by way of sports and fuel wood. When a part of the jungle became reserved forest and in regard to other proceedings under the Act were taken, the forest officers started interfering with their operations in those areas. Criminal cases for encroachments as also other forest offences were registered and systematic attempt was made to obstruct them from free movement. Even steps for throwing them out under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 were taken.

2. Some of the villages which were in existence for quite some time also came within the prohibited area. The tribals had converted certain lands around their villages into cultivable fields and had also been raising crops for their food. These lands too were included in the notified areas and, therefore, attempt of the Adivasis to cultivate these lands too was resisted.

3. On 22.8.1983, this Court made the following order:

> "The Writ Petition is adjourned to 4th October, 1983 in order to enable the parties to work out a formula under which

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Judgment dated November 20, 1986 in W.P. (Crl.) No. 1061 of 1982 and Crl. Misc. P. No. 2662 of 1986. [1986(2) SCALE 867] claim to Adivasis or tribals in Dudhi and Robertsganj Tehsils, to be in possession of land and to regularisation of such possession may be investigated by a high powered committee with a view to reaching a final decision in regard to such claims. Meanwhile, no further encroachments shall be made on forest land nor will any of the Adivasis or tribals be permitted under colour of this order or any previous order to cut any trees and if any such attempt is made, it will be open to the State authorities to prevent such cutting of trees and to take proper action in that behalf but not so as to take away possession of the land from the Adivasis or tribals."

4. On behalf of the State of Uttar Pradesh an affidavit was filed by the Assistant Record Officer wherein it was stated :

"It is respectfully submitted that for the information of this Court the State Government is already seized with the matter and is trying to identify claims and find out ways and means to regularise the same. To achieve this aim the Government has already appointed a High Power Committee chaired by the Chairman of Board of Revenue, U.P., Collector, Mirzapur and Conservator of Forest, South Circle, are also member of this Committee. This Committee has already held two sittings. In the last meeting held at Pipri on 16/17.8.1983 people of all shades of opinion presented their respective points of view before the Committee."

5. On 15.12.1983, this Court made another order which indicated that the Court was of the view that another High Powered Committee should be appointed. The relevant portion of that order was to the following effect :

"the parties will discuss the composition and modalities of the High Power Committee to be appointed by the Court for the purpose of adjudication the various claims of the persons belonging to the Scheduled Caste and other backward classes in Robertsganj and Dudhi Tehsils of Mirzapur District. Notice will also specify, that the Court proposes to appoint a High Power Committee consisting of retired High Court Judge and two other officers for the purposes of adjudicating upon the claims of the persons belonging to Scheduled Caste and Backward Classes in Dudhi and Robertsganj Tehsils of their land entitlements as also to examine the hereditory and customary rights of farmers in those tehsils and to adjudicate upon the claims of tribals of their customary rights with respect to fodder, fuel, wood, small timber, sand and stones for the houses, timber for agriculture implements, flowers, fruits and minor forest produce.

6. The Uttar Pradesh Government had in the meantime indicated that the tenure of the Committee under the Chairmanship of Shri Maheshwar Prasad, was to expire on December 31, 1983 and Government was awaiting the recommendations of that Committee. In that letter it was specifically stated :

"In the opinion of the State Government it would be more fruitful if the Committee proposed in your letter is constituted after the recommendations and advice of the previous Committee are received. The Government have agreed in principle that the proposed Committee with wide legal powers be constituted for adjudication of disputes."

Admittedly there had been no survey and settlement in these tehsils and in the absence of any definite record, this Court accepted the representation of the parties that it would be difficult to implement the directions of the

Court. The Court, therefore, directed that survey and record operation in these Tehsils be completed. But later it was again represented on behalf of the State Government that completion of such operation within a short and limited time would be difficult and particularly, during the rainy and the winter seasons it would not at all be practicable to work. The Court thereafter did not reiterate its directions in the matter of preparation of the survey and record operations and awaited the report of the Maheshwar Prasad Committee. Intermittent directions were given on applications filed on behalf of tribals when further prosecutions were launched.

7. From the affidavit of Shri B.K. Singh Yadav, Joint Secretary to the Revenue Department of the State Government, it appears that the Maheshwar Prasad Committee identified 433 villages lying South of the Kaimur Range of the Mirzapur District to be relevant for the present dispute. Of those 299 were in Dudhi Tehsil and the remaining 134 in Robertsganj Tehsil. The area involved was 9,23,293 acres out of which in respect of 58,937.42 acres notification under Section 20 of the Act has been made declaring the same as reserved forest and in respect of 7,89,086 acres notification under section 4 of the Act has been made. The Committee in its report pointed out that unauthorised occupation related to roughly one lakh eighty-two thousand acres.

8. In the same affidavit, it has been further stated that the Government by notification dated August 5, 1986, has established a special agency for survey and record operations to solve the problems of the claimants in the area and a copy of the notification has also been produced.

9. While this matter had been pending before this Court and there has been a general direction that there should be no dispossession of the local people in occupation of the lands, Government has decided that a Super Thermal Plant of the National Thermal Power Corporation Limited (for short 'NTPC') would be located in a part of these lands and acquisition proceedings have been initiated. NTPC is now a party before us upon its own seeking and has made an application indicating specifically the details of the lands which are sought to be acquired for its purpose. It has been claimed that the completion of the Project is a time-bound programme and unless the lands intended to be acquired are made free from prohibitive directions of this Court, the acquisition as also the consequential dispossession of persons in occupation and takeover of possession by the Corporation are permitted, the Project cannot be completed.

10. Indisputably, forests are a much wanted national asset. On account of the depletion thereof ecology has been disturbed; climate has undergone a major change and rains have become scanty. These have long-term adverse affects on national economy as also on the living process. At the same time, we cannot lose sight of the fact that for industrial growth as also for provision of improved living facilities there is great demand in this country for energy such as electricity. In fact, for quite some time the entire country in general and specific parts thereof, in particular, have suffered a tremendous set back in industrial activity for want of energy. A scheme to generate electricity, therefore, is equally of national importance and cannot be deferred. Keeping all these aspects in view and after hearing learned counsel for the parties in the presence of officers of the State Government and NTPC and representatives of the Banwasi Seva Ashram, we proceed to give the following directions :

(1) So far as the lands which have already been declared as reserved forest under section 20 of the Act, the same would not form part

of the Writ Petition and any direction made by this Court earlier, now or in future in this case would not relate to the same. In regard to the lands declared as reserved forest, it is, however, open to the claimants to establish their rights, if any, in any other appropriate proceeding. We express no opinion about the maintainability of such claim.

(2) In regard to the lands notified under section 4 of the Act, even where no claim has been filed within the time specified in the notification as required under section 6(c) of the Act, such claims shall be allowed to be filed and dealt with in the manner detailed below :

I. Within six weeks from 1.12.1986, demarcating pillars shall be raised by the Forest Officers of the State Government identifying the lands covered by the notification under section 4 of the Act. The fact that a notification has been made under section 4 of the Act and demarcating pillars have been raised in the locality to clearly identify the property subjected to the notification shall be widely publicised by beat of drums in all the villages and surrounding areas concerned. Copies of notices printed in Hindi in abundant number will be circulated through the Gram Sabhas giving reasonable specifications of the lands which are covered by the notification. Sufficient number of Inquiry Booths would be set up within the notified area so as to enable the people of the area likely to be affected by the notification to get the information as to whether their lands are affected by the notification, so as to enable them to decide whether any claim need be filed. The Gram Sabhas shall give wide publicity to the matter at their level. Demarcation, as indicated above, shall be completed by 15.1.1987. Within three months therefrom, claims as contemplated under section 6(c) shall be received as provided by the statute.

II. Adequate number of record officers shall be appointed by 31st December, 1986. There shall also be five experienced Additional District Judges, one each to be located at Dudhi, Muirpur, Kirbil of Dudhi Tehsil and Robertsganj and Tilbudwa of Robertsganj Tehsil. Each of these Additional District Judges who will be spared by the High Court of Allahabad, would have his establishment at one of the places indicated and the State shall provide the requisite number of assistants and other employees for their efficient functioning. The learned Chief Justice of the Allahabad High Court is requested to make the services of five experienced Additional District Judges available for the purpose by 15th December, 1986 so that these officers may be posted at their respective stations by the first of January, 1987. Each of these Additional District Judges would be entitled to thirty per cent of the salary as allowance during the period of their work. Each Additional District Judge would work at such of the five notified places that would be fixed up by the District Judge of Mirzapur before 20th of December, 1986. These Additional District Judges would exercise the powers of the Appellate Authority as provided under section 17 of the Act.

III. After the Forest Settlement Officer has done the needful under the provisions of the Act, the findings with the requisite papers shall be placed before the Additional District Judge of the area even though no appeal is filed and the same shall be scrutinized as if an appeal has been taken against the order of the authority and the order of the Additional District Judge passed therein shall be taken to be the order contemplated under the Act.

(3) When the Appellate Authority finds that the claim is admissible, the State Government shall (and it is agreed before us) honour the said decision and proceed to implement the same. *Status quo* in regard to possession in respect of lands covered by the

notification-under section 4 shall continue as at present until the determination by the appellate authority and no notification under section 20 of the Act shall be made in regard to these lands until such appellate decision has been made.

(4) Necessary assistance by way of Legal Aid shall be provided to the claimants or persons seeking to raise claims and for facilitating obtaining of requisite information for lodging of claims, actual lodging of claims and substantiating the same both at the original as also the appellate stage as contemplated, by the claimant legal aid shall be extended to the claimants, without requiring compliance of the procedure laid down by the Legal Aid Board. The Legal Aid and Advice Board of Uttar Pradesh and the District Legal Aid and Advice Committee of Mirzapur shall take appropriate steps to ensure availability of such assistance at the five places indicated above. For the purpose of ensuring the provision of such legal aid, State of Uttar Pradesh has agreed to deposit a sum of Rupees five lakhs with the District Legal Aid Committee headed by the District Judge of Mirzapur and has undertaken to deposit such further funds as will be necessary from time to time. It shall be open to the District Legal Aid Committee under the supervision of the State Legal Aid Board to provide legal aid either by itself or through any Social Action Groups, like the Banwasi Seva Ashram.

(5) The land sought to be acquired for the Rihand Super Thermal Power Project of the NTPC shall be freed from the ban of dispossession. Such land is said to be about 153 acres for Ash Pipe Line and 1643 acres for Ash Dyke and are located in the villages of Khamariya, Mitahanai, Parbatwa, Jheelotola, Dodhar and Jarha. Possession thereof may be taken after complying with the provisions of the Land Acquisition Act, but such possession should be taken in the presence of one of the Commissioners who are being appointed by this order and a detailed record of the nature and extent of the land, the name of the person who is being dispossessed and the nature of enjoyment of the land and all other relevant particulars should be kept for appropriate use in future. Such records shall be duly certified by the Commissioner in whose presence possession is taken and the same should be available for use in all proceedings that may be taken subsequently.

The NTPC has agreed before the Court that it shall strictly follow the policy on "facilities to be given to land oustees" as placed before the Court in the matter of lands which are subjected to acquisition for its purpose. The same shall be taken as an undertaking to the Court.

(6) It is agreed that when a claim is established appropriate title-deed would be issued to the claimant within a reasonable time by the appropriate authority.

(7) The Court appoints the following as a Board of Commissioners to supervise the operations and oversee the implementation of the directions given :

(i) Mr. P.R. Vyas Bhiman (I.A.S. retired), Executive-Chairman of the State Board of Revenue, U.P. now residing at Lucknow;

(ii) Dr. Vasudha Dhagamwar;

(iii)A representative to be nominated by the Banwasi Seva Ashram.

The Committee shall be provided by the State Government with transport facilities and the appropriate infrastructure. This should be completed before 31st December, 1986.

11. In the affidavit filed by Shri Yadav, Joint Secretary to the State Government on November 7, 1986, certain instructions of the State Government have been detailed. To the extent the instructions are not superseded by the Court's directions in to-day's order the same shall remain effective.

12. We must express our satisfaction in regard to the co-operation shown by the parties. Mr. Gopal Subramaniam appearing for the State of Uttar Pradesh has been considerable pains to give shape to the matter. Mr. Ramamurti for the petitioner has also done considerable work in evolving the ambit of the guidelines which we have adopted. We hope that all parties concerned with the matter would exhibit the proper spirit necessary to successfully complete the assignment. We give liberty to parties to move for directions as and when necessary. The Board of Commissioner shall also be at liberty to approach this Court for directions when necessary for implementing the present arrangements.

SCALE (PIL) 1981-97 1730

BHOPAL GROUP FOR INFORMATION & ACTION *Petitioners*

VS

STATE OF M.P. & ORS. *Respondents*

CORAM: P.N. BHAGWATI, CJI., AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — BHOPAL GAS TRAGEDY — SEIZURE OF DOCUMENTS — Directions given.

1. Petitioners in the Writ Petition will attend the office of the Collector at 10.30 a.m. on 13.11.1986 and in their presence, the trunk containing documents and papers which were seized by the police, will be opened for varification of their contents. The trunk will be again locked jointly as directed before. The matter is adjourned to 14.11.1986 to enable the learned Counsel for the State to inform the Court as to what are the offences being investigated by the police for which purpose the documents and papers seized by the police are required.

Order dated November 11, 1986 in W.P. (C) No. 1363 of 1986. [1986(2) SCALE 893]

SCALE (PIL) 1981-97 1730

ENVIRONMENT PROTECTION COUNCIL *Petitioner*

VS

UNION OF INDIA AND ORS. *Respondents*

CORAM: V. BALAKRISHNA ERADI AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — POLLUTION — FERTILISER FACTORIES — Writ petition disposed of with directions and observations.

1. By our Order dated March 14, 1986 we directed that the Writ petitioner who has complained that the establishment of the two factories near the town of Kakinada will constitute a grave source of danger to the public by causing environmental and water pollution may make a detailed representation to the Central Board for Prevention and

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Order dated November 18, 1986 in W.P. No. 5357 of 1985. [1986(2) SCALE 904]

Control of Water Pollution, New Delhi, setting out its objections in full in regard to the location and other relevant matters pertaining to the pollution said to be likely to arise as a result of the establishment of the Fertiliser factories. We directed that the Central Board should examine the said representation and to submit a detailed report to this Court within a period of three weeks from the date of receipt of such representation. In compliance with the said Order the Chairman of the Central Board for Prevention and Control of Water Pollution, New Delhi appointed an Expert Committee to visit the sites, examine all the aspects relating to air and water pollution and submit a detailed report to him. Based on the Report of the said Expert Committee, the Chairman has submitted his report to this Court wherein he has recommended that subject to the fulfilment of the conditions mentioned in the report the industries may be allowed to be set up in Kakinada.

2. It is submitted before us by the counsel for the petitioner that the reports of the Chairman and the Expert Committee contain certain inherent contradictions and they cannot be therefore accepted at their face value. We are unable to find any merit in this contention. The Committee consisted of very highly qualified experts in the line and this Court finds no reason why the recommendation should not be accepted and acted upon. A further submission was made before us by counsel for the petitioner that the environmental aspect has not been examined independently by the said Committee for Experts because it is a matter to be dealt with by the State Government of Andhra Pradesh. We are assured by the learned Attorney General appearing on behalf of the State Government of Andhra Pradesh that the Government of Andhra Pradesh would take all necessary steps through the appropriate agency to ensure that the adequate safeguards are provided by the respondents, to see that there is no adverse environmental impact. This assurance in our opinion, constitutes an adequate safeguard against the possible hazards of pollution, from the environmental point of view. The authorities incharge of grant of licences will see to it that the conditions incorporated in the report of the Expert Committee constituted by the Central Board for Prevention and Control of Water Pollution, New Delhi, are fully complied with when the factories are being set up.

3. The Writ Petition is disposed of with these directions and observations. The parties will bear their respective costs.

SCALE (PIL) 1981-97 1731
THE SOCIAL WORK RESEARCH CENTRE ETC. ETC. *Petitioners*
VS
STATE OF RAJASTHAN *Respondents*

CORAM: P.N. BHAGWATI, CJI., AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — LABOUR LAWS — MINIMUM WAGES — Minimum wages to workers engaged in drought relief work.

Order dated November 14, 1986 in W.P. (C) Nos. 279, 282 & 357 of 1986. [1986(2) SCALE 905]

1. We are glad to note that the Government of Rajasthan has pursuant to the recommendation of the Committee constituted under the Minimum Wages Act has fixed the rates of minimum wages for workers employed in the Famine Relief work. The State Govt. will naturally pay to the workers the rates of minimum wages under this Notification with effect from 16th October, 1986, that being the date when the Notification was issued by the State Govt. We expressed the hope in our earlier Orders that the Central Govt. will provide necessary assistance to the State Govt. since the minimum wages required to be paid to workers are by way of famine relief operations. Since the acceptance of the recommendations of the Committee constituted for fixing the rates of minimum wages and the implementation of the Notification will involve a burden of Rs. 20 crores, the Central Govt. may consider the question of providing assistance to the State Govt. at an early date, particularly when it is meant for famine relief operations. We expected the Central Govt. would at the earliest enable the State Government to see that these workers get the minimum wages. But we are informed by Dr. Singhvi, Advocate appearing on behalf of State Govt. that the Central Govt. does not appear to have taken a decision in this regard, and no grant has been made for meeting the expenses.

2. We are glad to find that the State Government has accepted the suggestion made in paragraph 5 of the Report of the Committee constituted for fixing the minimum wages, except in regard to the provision of tools and plants which is under consideration of the State Government. We are happy that this public interest litigation has provided relief to a large number of needy poor persons and we also note with our sense of satisfaction as to the manner in which the State Govt. has responded to this litigation.

3. Learned counsel for the petitioner states that they want some time to take instructions from the petitioners. Hence we adjourn the matter for two weeks.

SCALE (PIL) 1981-97 1732

PEOPLES' UNION FOR DEMOCRATIC RIGHTS *Petitioner*

VS

STATE OF BIHAR & ORS. *Respondents*

CORAM: RANGANATH MISRA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — POLICE BRUTALITY — DEATHS — Police firing and as a result 21 people died — Compensation by the State in some cases — Court issues directions.

Ranganath Misra, J.— Peoples' Union for Democratic Rights, an organisation said to be committed to the upholding of fundamental rights of citizens has filed this application under Article 32 of the Constitution. It is alleged that on 19th April, 1986, 600 to 700 poor peasants and landless people mostly belonging to the backward classes had collected for holding a peaceful meeting within the compound of Gandhi

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Judgment dated December 19, 1986 in W.P. (Crl.) No. 369 of 1986. [1986(2) SCALE 1093]

Library in Arwal, a place within the District of Gaya in the State of Bihar. Without any previous warning by the police or any provocation on the part of the people who had so collected, the Superintendent of Police, Respondent No. 3 herein, reached the spot with police force, surrounded the gathering and opened fire as a result of which several people were injured and at least 21 persons including children died. The petitioner alleged that separate unofficial inquiries have been held into the atrocity and the reports indicated that the number of deaths was much more than 21 and there was no justification for the firing. It appears that there was a dispute relating to possession of 26 decimals of low lying land adjacent to the canal at Arwal and to such dispute members of a rich Rajak family on one side and members of nine poor families on the other were parties. Even though several people died and many more were injured by the ruthless and unwarranted firing resorted to by the police to give a cover to the atrocities,the police started a false case being Arwal P.S. Case No. 59 of 1986 and therein implicated several innocent people including even some of the people who had been killed in the firing. Three specific prayers were made in the writ petition, namely :-

(1) To issue an appropriate writ or make an order or direction in the matter of payment of full and proper compensation to the victims-relations of the dead and to the people who were injured by police firing;

(2) For a direction to withdraw the police case referred to above; and

(3) For a direction to the Respondent No.1 to settle the land in dispute with the nine poor families.

2. During the hearing of the matter, an additional relief was pressed, namely, this Court should give a direction for instituting a judicial inquiry into the alleged atrocity.

3. It may be pointed out that during the pendency of this writ application the State Government in response to the growing demand for a judicial inquiry into the matter directed an inquiry therein by Shri Vinod Kumar, Member, Board of Revenue, Bihar. The said inquiry has been completed and the report has already been furnished to the Government. On the orders of the Court, the report has been produced before this Court with a claim of privilege against disclosure thereof.

4. The incident drew a lot of publicity and attention both within the States as also outside. Coming to know about it, Shri B.D. Sharma, Assistant Commissioner for Scheduled Castes and Scheduled Tribes visited the locality and made a report. At the instance of the petitioner, that document was summoned and has been produced. In respect thereof the Union Government has also claimed privilege.

5. In the affidavits in opposition filed on behalf of the respondents the factual assertions raised in the writ petition have been disputed. It has also been brought to our notice that a writ petition has been filed before the Patna High Court prior to filing of this application under Article 32 before this Court and the writ petition in the High Court is still pending. Once this fact was brought to our notice, Mr. Mukati for the petitioner submitted that we should direct transfer of the writ petition pending in the High Court to this Court so that both the matters can be heard together. We are of the view that it would be appropriate that the matter is examined by the High Court. It would be convenient to the parties to produce material before the High Court on account of proximity; the High Court will be in a position to call for documents and, if necessary, affidavits of parties concerned as and when necessary while dealing with the matter; and without notice and without affording a reasonable opportunity to the parties in the writ petition before the High Court an order of transfer may not be appropriate. In these circumstances, we have not thought it proper to have the writ petition in the High Court transferred to this Court. On the other hand, we have considered it expedient and proper in the interest of justice to dispose of some aspects of the matter now and leave it open to the petitioner to canvass the other aspects by getting itself impleaded before the High Court in the pending writ petition or by the filing of an independent application.

6. There has been no dispute that as a result of the police firing 21 people died and several others were injured. The heirs and relations of a few of the dead people had been compensated by the State to the tune of Rupees ten thousand as found from the record. No justification has been indicated as to why the said compensation has not been given in every case of death or injury. It is a normal feature of which judicial notice can be taken that when such unfortunate consequences emerge even in police firing, the State comes forward to give compensation. Mr. Jaya Narayan, for the State candidly stated before us that it is not the intention of the State to deprive the relatives of some of the victims who succumbed to the injuries sustained by police firing from benefit of compensation. Ordinarily in the case of death compensation of Rupees twenty thousand is paid and we see no reason as to why the quantum of compensation should be limited to rupees ten thousand. We may not be taken to suggest that in the case of death the liability of the wrong doer is absolved when compensation of Rupees twenty thousand is paid. But as a working principle and for convenience and with a view to rehabilitating the dependants of the deceased such compensation is being paid. We direct that :

(1) without prejudice to any just claim for compensation that may be advanced by the relations of the victims who have died or by the injured persons themselves, for every case of death compensation of Rupees twenty thousand and for every injured person compensation of Rupees five thousand shall be paid. Where some compensation has already been paid, the same may be adjusted when the amount now directed is being paid. These payments be made within two months hence.

(2) In case the petitioner gets impleaded in the pending writ petition before the High Court or files a separate writ petition and presses for disclosure of the Report of Mr. Kumar, the High Court may examine the question as to whether the report will be made public and in the event of privilege being claimed, the question of privilege will also be examined by the High Court.

(3) We have read the report furnished by the Assistant Commissioner of Scheduled Castes and Scheduled Tribes and since the report is not relevant to the point in issue, it is not necessary to ask the High Court to call for the Report. We direct that the report to be returned to the appropriate Ministry from where it has been brought.

(4) The investigation of the pending police case shall be completed within three months from now. In case chargesheet is submitted, it would be open to the petitioner or any other aggrieved party to challenge the maintainability of the charges in accordance with law.

7. ⑥ The writ petition is disposed of with the aforesaid directions. The parties shall bear their own costs.

SCALE (PIL) 1981-97 1735
P.M. ANTONY *Petitioner*
VS
DISTT. COLLECTOR & ORS. *Respondents*
CORAM: RANGANATH MISRA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 19 — Play banned by Collector in State of Kerala — Court disposes of the petition with directions.

1. Heard learned counsel for the petitioner. On reading the papers and hearing the counsel, we are inclined to take a view that the matter perhaps may involve a problem of law and order and, therefore, it would not be proper for this court to interfere with the impugned order. We, therefore, suggested to the petitioner that he should go to the Collector of Ernakulam and ask for a fresh hearing. In case he satisfies the Collector that the apprehension of the administration is not appropriate, we are sure, the Collector would look into the matter again and reconsider his order on such materials as would be placed before him. The petitioner agrees to approach the Collector within a fortnight. In case the petitioner asks for review of the order, the Collector, without feeling bound by what has been said by the High Court, would apply his mind to the new material placed before him and dispose of the matter in accordance with law. The Collector will dispose of the matter within one month from the date of the petitioner's moving him. The special leave petition is disposed of accordingly.

Order dated December 17, 1986 in S.L.P. (C) No. 15312 of 1986. [1986(2) SCALE 1254]

SCALE (PIL) 1981-97 1735
SELF EMPLOYED WOMEN'S ASSOCIATION AND ORS. *Petitioners/Appellants*
VS
MUNICIPAL CORPORATION OF AHMEDABAD AND ORS. *Respondents*
CORAM: P.N. BHAGWATI, CJI., AND G.L. OZA, J.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 32 — WOMEN VENDORS IN AHMEDABAD — Further directions given.

1. Mr. M.N. Shroff, Advocate for the Municipal Corporation has handed over a copy of the letter dated 12th December, 1986 addressed by the Director of Estates and Town Planning to the Secretary, SEWA showing that a meeting had been held on 9th December, 1986 wherein certain decisions were taken. The CMP will stand withdrawn on the basis of those decisions. But we would direct that the Municipal Corporation will issue to the members of SEWA certificates which will be in the nature of temporary license so that until alternative accommodation is given, these members will be entitled in law to carry on vending vegetables at a place where they have been doing so far. We are informed that out of 218 families of vegetable vendors who are covered by our order dated 16th August, 1984, 186 names have been agreed upon between

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Order dated December 17, 1986 in C.M.P. No. 32061/86 (in W.P. 89/82). [1986(2) SCALE 1254] the Municipal Corporation and the SEWA and so far as the remaining 32 names are concerned they will be identified as a result of mutual agreement between the Corporation and the SEWA. If any female vegetable vendor is coming within this category of 32 persons is not available either on account of death or any other reason, a member of the family of such person will be issued certificates in the nature of temporary license within three weeks from today and shall be given benefit of the order of 16th August, 1984. If for any reason, a family is not available the Municipal Corporation may allow any other woman to carry on vending vegetables at the appointed place as a result of agreement between the SEWA and the Municipal Corporation.

2. We are informed that SEWA has already collected Rs. 200/- per member and the amount is lying with SEWA. It will be transferred in the joint account to be opened in the names of SEWA and the Municipal Corporation within 15 days from today. This amount in the joint account will not be used by the Corporation for construction of the stair case and make the necessary arrangements as directed by us on 16th August, 1984. This amount will be utilised for the purpose of welfare of these women vegetable vendors in mutual consultation between SEWA and the Corporation. The Municipal Corporation will pay to the petitioner a sum of Rs. 1,000/- by way of costs.

3. The CMP is disposed of accordingly.

SCALE (PIL) 1981-97 1736

ASHOK KUMAR MITTAL *Petitioner/Appellants*

VS

MARUTI UDYOG LTD. & ANR. *Respondents*

CORAM: A.P. SEN AND S. NATARAJAN, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — PUBLIC SECTOR CORPORATIONS — MARUTI — "Manufacturer Directors Discretionary Quota".

1. The matter is adjourned to 3rd week of January, 1987. In the meanwhile, learned Attorney General will try to evolve a workable solution. Learned counsel for the other side are at liberty to make their suggestions, if any.

Order dated December 16, 1986 in C.M.P. Nos. 25666-67/86 (in W.P. Nos. 588 & 11716/84). [1986(2) SCALE 1260]

SCALE (PIL) 1981-97 1736

SARITA *Petitioner*

VS

DELHI ADMN. & ORS. *Respondents*

CORAM: R.S. PATHAK, CJI., RANGANATH MISRA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — RIGHTS OF WOMEN — DOWRY — Court issues

Order dated February 5, 1987 in W.P. (C) No. 99/87. [1987(1) SCALE 403]

directions to Commissioner of Police.

[Ed. Note: Petitioner was married on 13-2-1986 and two months after marriage husband started demanding money as a result of losses in his business. She did not tell her father but things took a bitter turn. Petitioner's life is threatened and she sends a letter to the Court.]

1. Issue notice to the Commissioner of Police, Delhi and the Station House Officer, Shahdara, Delhi returnable within one week.

2. The Commissioner of Police is directed to direct an immediate enquiry into the matter, and to provide necessary Police protection as may be found necessary and adequate. The report of the enquiry directed by him should be submitted to this Court within one week from today.

SCALE (PIL) 1981-97 1737
SARITA *Petitioner*
VS
DELHI ADMN. & ORS. *Respondents*
CORAM: R.S. PATHAK, CJI., RANGANATH MISRA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — RIGHTS OF WOMEN — DOWRY — (Reported in 1987 (1) SCALE 403) — Court while disposing of the petition issues further directions.

1. From a perusal of the counter affidavit filed by Shri V. Rajgopal, Deputy Commissioner of Police, East District, Delhi, we are satisfied that adequate action has been taken on a notice issued by us in this case and that necessary proceedings are being taken consequent upon the complaint made by the petitioner. Nothing further needs to do on this petition and it is disposed of accordingly.

2. The Petitioner who appears in person before us prays for legal aid to her in proceedings taken in Court below. The Delhi District Legal Aid and Advice Board is directed to provide her necessary legal assistance on her applying to in that behalf.

3. A copy of this order will be given to the petitioner in person.

Order dated February 12, 1987 in W.P. Crl. No. 99/87. [1987(1) SCALE 555]

SCALE (PIL) 1981-97 1737
DR. MOTA SHIVRAM KARANTH & ORS. *Petitioners*
VS
STATE OF KARNATAKA & ORS. *Respondents*
CORAM: R.S. PATHAK, CJI., AND RANGANATH MISRA, J.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — FORESTS — SANDALWOOD

Order dated March 24, 1987 in W.P. (C) No. 35 of 1987. [1987(1) SCALE 691]

FORESTS — "Gomal land" in the Western ghat area given by State of Karnataka to a joint sector company for growing of raw material for polyfibres.

[Ed. Note: M.S. Karanth is a well known literary person in Karnataka. He contends that 70.625 acres and 7,475 acres of C & D class of land containing thick forests have vested with the village community of 5 lakhs of people for an extensive period of time in the 76 villages of Chikmangalur and Shimoga.

The State has floated a joint-sector company "Karnataka Pulp Wood Ltd." with 51% held by the State and 49% by Harihar Polyfibres (a Birla concern) and leased the forests on the condition that 87% of the product Eucalyptus will be sold to Polyfibres thereby denuding the forests].

1. Issue notice on the Writ Petition.

2. Issue notice returnable in four weeks. On the stay application, until further orders status quo as regards possession shall be maintained.

SCALE (PIL) 1981-97 1738

PRAMOD KUMAR ETC. *Petitioners*

VS

N.D.M.C. & ORS. ETC. *Respondents*

CORAM: E.S. VENKATARAMIAH AND V. KHALID, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 32 — STREET HAWKERS — Court refers matter to a bench of 5 judges.

1. Issue notice and stay in all the matter where it is not issued.

2. The interim order passed in these cases are modified as follows :

3. No hawker shall carry on business within 30 yards from main gates of Safdarjang and Ram Manohar Lohia Hospital.

4. No person shall occupy anywhere an area more than 6' X 4'.

5. No hawker shall sub-let the place now occupied by him.

6. All these cases are referred to a bench of 5 judges with liberty to mention to the Hon'ble the Chief Justice of India for an early date of hearing. These cases have to be heard expeditiously. Every petitioner shall produce the original documents, photocopies of which have been produced in the Court before the next date of hearing and those cases where original documents are not produced are liable to be dismissed. Whatever interim orders are made will continue subject to the above modifications.

Order dated April 30, 1987 in SLP(C) Nos. 1328/87, 4519-23, 9330, 13008/86, 4994-5001/87 and 5141-44/87 with W.P. Nos. 140, 206, 242, 82, 83, 109, 93, 41, 113, 237, 257, 263, & 313/87, 1677-78, 1559, 1708, 1644, 1737, 1643, 1215, 724/86, 520, 243 & 245/87 (R. Chand vs N.D.M.C.) with T.P. (C) No. 48/87 (Kamrul vs N.D.M.C.) with W.P. Nos. 218, 1155, 1615/87 (A. Gaund vs N.D.M.C.) with W.P. No. 401/87 (B. Lal vs M.C.D. Town Hall) with W.P. No. 500/87 (N.J. Ade vs N.D.M.C.). [1987(1) SCALE 1300]

SCALE (PIL) 1981-97 1739
NAGENDRA DUTT JAGUDI *Petitioner*
VS
STATE OF U.P. *Respondent*

CORAM: A.P. SEN AND V. BALAKRISHNA ERADI, JJ.

PUBLIC INTEREST LITIGATION — LABOUR LAWS — ATROCITIES-INFLICTION OF — Atrocities committed on workmen in Tehri — Court issues further directions to State.

1. We strongly deprecate the approach of the State Govt. which does not seem to be eager to comply with the directions made by this Court's orders. We direct the State Govt. to file a detailed counter affidavit within two weeks from today setting out what steps have so far been taken.

2. We have perused the report of the District Judge. Tehri Garhwal dated January 14, 1987 wherein the District Judge during the course of his enquiry has come to a definite finding that the atrocities have been committed on the workmen of Chahal Engineering and Construction (P) Ltd., Tehri. We direct that a copy of the report be forwarded to the Chief Secretary to the Government of U.P. forthwith for initiating appropriate criminal proceedings against the Management of the Company and the other persons responsible.

3. Intervention application will be heard on the next date of hearing.

4. The matter is adjourned for two weeks.

Order dated April 10, 1987 in W.P. (Crl.) No. 1608/84. [1987(1) SCALE 1301]

SCALE (PIL) 1981-97 1739
DESH RAJ KHURANA AND OTHERS *Petitioners*
VS
DELHI ADMINISTRATION *Respondent*

CORAM: R.S. PATHAK CJI. AND M.H. KANIA, J.

PUBLIC INTEREST LITIGATION — MIGRANTS — SHELTER FOR MIGRANTS FROM PUNJAB — Disposing of the writ petition with directions and appointing the Registrar as Commissioner.

1. The learned Additional Solicitor General and learned counsel for the petitioners visited the area in Jahangirpuri where the Transit Camp is located and both are agreed that for the present it is not possible to contemplate the operation of the Transit Camp as a shelter for these migrants. The learned Additional Solicitor General says further that the Transit Camp may be in a position to accommodate these migrants within a week. It is necessary to ensure that the Transit Camp is in proper condition to house the migrants before they are required to shift from the flats in Jahangirpuri presently

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Order dated May 8, 1987 in W.P. (C) No. 557 of 1987. [1987(1) SCALE 1313] occupied by them. For that purpose, we appoint Shri A.N. Oberoi, Registrar of this Court as Commissioner who will, upon intimation by the Delhi Administration that the Transit Camp is ready for use, go to the area after notice to the Delhi Administration and learned counsel for the petitioners, and ascertain for himself whether having regard to the basic amenities necessary for occupation by the migrants the Transit Camp is fit for occupation. In the event of his certifying so and informing the Delhi Administration accordingly as well as learned counsel for the petitioners, the petitioners will vacate the flats presently occupied by them and shift to the Transit Camp. They will do so peacefully and without resistance whatsoever. In case any resistance is offered by them, it will be open to the Delhi Administration to evict them forcibly.

2. Our attention has also been drawn to the need of migrants who have left the Piragarhi Relief Camp and have occupied the Delhi Development Authority flats in Jahangirpuri in the same manner as the migrants from the Transit Camp. The Commissioner will proceed to the Piragarhi Relief Camp after notice to the Delhi Administration and learned counsel for the petitioners and determine likewise whether the accommodation vacated by those persons has been restored to its original condition and is fit for occupation by those persons. He will similarly inform the Delhi Administration and learned counsel for the petitioners of the view taken by him in the matter.

3. We further direct the Delhi Administration to make payment as it has done hithertofore to the mgirants from the Transit Camp as well as those from the Piragarhi Relief Camp who have occupied the flats, with effect from the date on which they were compelled to vacate the respective camps and take possession of those flats. Those payments will be continued as before.

4. The remuneration of the Commissioner will be paid by the Delhi Administration, and will be determined by us subsequently.

5. The Writ Petition is disposed of accordingly.

SCALE (PIL) 1981-97
1740

THE RESIDENTS OF BHOGALPUR HARIJAN CELL *Petitioners*

VS

STATE OF BIHAR & ORS. *Respondents*

CORAM: RANGANATH MISRA AND G.L. OZA, JJ.

PUBLIC INTEREST LITIGATION — WEAKER SECTIONS — ATROCITIES — Court issues directions.

1. Issue notice returnable within two weeks.

2. Report of the Investigating Agency of the Harijan Cell of C.I.D., Bihar in regard to the allegations contained in the Writ Petition may also be produced by the State Government alongwith its counter affidavit.

Order dated April 22, 1987 in W.P (Crl.) No. 318/1987. [1987(1) SCALE 1302]

SCALE (PIL) 1981-97 1741

FREE LEGAL AID COMMITTEE, JAMSHEDPUR *Petitioners*
VS
MAHATAMA GANDHI MEMORIAL
MEDICAL COLLEGE, HOSPITAL SAKCHI, JAMSHEDPUR. *Respondents*

CORAM: O. CHINNAPPA REDDY AND K. JAGANNATHA SHETTY, JJ.

PUBLIC INTEREST LITIGATION — MEDICARE — CONDITIONS IN THE HOSPITALS — Conditions prevailing in Medical College Hospital in Bihar — Further directions given.

1. Pursuant to our Order dated 12.1.1987 the District Judge, Jamshedpur inspected the Mahatama Gandhi Memorial Medical College Hospital, Sakchi and has submitted a report to us. A perusal of the report shows beyond a shadow of doubt that the state of the hospital is deplorable and unworthy of being called a General Hospital or a Medical College Hospital. What is worse is that it is named after the Father of the Nation. Some of the facts noticed by the District Judge may be mentioned by us here. The District Judge found that 19 posts of doctors were vacant, including those of professors of Medicine, Obst. & Gynaecology, E.N.T., Skin and Venereal Diseases. Both the posts sanctioned for the T.B. Clinic were vacant. No post of Professor was sanctioned for the departments of Anasthesiology and Radiology. 28 posts of Staff Nurses and 10 posts of Nursing Sisters were also vacant. The only ambulance available for the Hospital was not capable of being used because there was only one driver and the remaining posts of drivers were vacant. Out of 17 Oxygen Cylinders,seven were empty. There was no intensive care unit at all. Though there were five departments said to be functioning, there was only one operation theatre. There was no O.T. Assistant, O.T. Sister or O.T. Attendant in the operation theatre. For several days Ether was not available and attendants of patients were asked to bring Ether from the open market. The streilizer available to the staff nurses was out of order. The telephone was not working. There was no means of inter-communications in the hospital. The only lift was out of order. The wards were not clean. Sanitary-wares had turned black. Wash basins were in a miserable condition. Apart from that they also appeared to be out of use. Taps were broken and dry. The condition of the store-room was miserable, so was the case with the kitchen. The electric fittings were either broken or rusted or out of order. Switch boards were in poor condition. Some of them were hanging from the walls. In one of the rooms of the T.B. Wards, there was no electric light at all.

2. Most of the patients complained that they were being asked to purchase the medicine from out-side, as the quality and quantity of the medicine given to the hospital was poor.

3. In the prisoners' ward it was found that one of the prisoners was chained to his bed. It appears that one of the patients in the prisoners' ward died of T.B. after being admitted to the hospital as there was no arrangement for treating prisoners suffering from T.B.

4. Having regard to the sad state of affairs in the hospital, we think that it is absolutely necessary that we should issue some directions if the dignity of the individual mentioned in the preamble to the Constitution, the right to life guaranteed by

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Order dated May 4, 1987 in W.P. (Crl.) No. 58 of 1982. [1987(1) SCALE 1321]

Article 21 of the Constitution, the duty of the State under Article 41 to make effective provision for securing public assistance in cases of sickness and disablement and the further primary duty of the State under Article 47 to raise the level of nutrition, the standard of living of the people and improvement of public health are to have any meaning.

5. The State of Bihar is therefore directed to prepare and submit to this Court a report within three months a comprehensive scheme for the improvement of the hospital and the services rendered to the patients by the Hospital.

6. In the meanwhile urgent steps should be taken to remove the defects noticed by the Metropolitan District Judge. A report should be submitted to us regarding the steps taken by the Government within three months from today.

SCALE (PIL) 1981-97 1742
RESIDENTS OF BHOGALPUR HARIJAN TOLA *Petitioners*
VS
STATE OF BIHAR & ORS. *Respondents*
CORAM: RANGANATH MISRA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — WEAKER SECTIONS — ATROCITIES — Court issues further directions while disposing of the writ petition.

1. Heard learned counsel for the parties. Writ Petition is disposed of in terms the signed order placed on the file.

Order dated July 23, 1987 in Crl. M.P. No. 2687/87 (in W.P. Crl. No. 318/87.) [1987(2) SCALE 184]

SCALE (PIL) 1981-97 1742
THE RESIDENTS OF BHOGALPUR HARIJAN TOLA *Petitioners*
VS
STATE OF BIHAR & ORS. *Respondents*
CORAM: RANGANATH MISRA AND M.M. DUTT, JJ.

PUBLIC INTEREST LITIGATION — WEAKER SECTIONS — ATROCITIES — Court issues further directions while disposing of the writ petition.

1. Heard learned counsel for the parties. We have seen the affidavits and the copies of the report annexed to the counter affidavit.

2. We see no justification to interfere in the matter at this stage in view of the facts disclosed in the counter affidavit. Learned counsel for the petitioners has, however, asked for two pointed directions, namely. :

(1) Some of the prosecution witnesses who have already been examined cross examined and discharged in the Sessions trial should be recalled for cross

Order dated July 23, 1987 in W.P. (Crl.) No. 318 of 1987. [1987(2) SCALE 185]

examination and

(2) A defence counsel at the cost of the State+1X may be provided as the accused have not been able to get themselves enlarged on bail and are in custody and are going undefended.

3. Counsel for the State has no objection to a defence counsel being provided in accordance with the rules. He also has no objection to our indicating in this order that it would be open to the accused persons to apply to the learned trial judge to recall any particular prosecution witness who has already been examined and cross examined and discharged for further cross examination on the basis of the Report which has now been disclosed to the accused persons a part of the counter affidavit in this Court. We hope and trust that when such an application is made the learned trial Judge will apply his mind and find out if there is any justification for allowing such further cross examination and in case he is satisfied that in the interest of justice such further cross examination should be allowed, he may do so either immediately or at a later stage after the defence is closed. This is indicated in view of the representation to us from the Bar that the defence witnesses are being examined from 16th July, 1987. The point of time at which such cross examination will be allowed is a matter for the learned trial Judge to fix in his discretion. We hope it would be done in such a manner that neither party would feel prejudiced. Writ Petitioner is disposed of accordingly.

SCALE (PIL) 1981-97 1743

ASHOK KR. MITTAL & ORS. *Petitioners*

VS

MARUTI UDYOG LTD. & ANR. *Respondents*

CORAM: A.P. SEN AND B.C. RAY, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — PUBLIC SECTOR CORPORATIONS — MARUTI — "Manufacturers Directors Discretionary Quota" — Further directions given.

1. We amend the guidelines formulated by this Court's order dated March 7, 1986 for regularising the distribution of manufacturer's 5% quota of Maruti. We order that the distribution of the manufacturer's quota hereafter shall be as specified in Schedule 'A'. The CMPs are disposed of accordingly.

SCHEDULE "A"

The following conditions will be strictly observed in the allotment of vehicles to any organisation/institution, person or individual in any of the aforesaid category :

(a) There will be no resale of the vehicle by the allottee for a period of three years. This condition will be inserted in the order of allotment issued in favour of the allottees. Maruti Udyog Limited will further obtain before delivery of the vehicle a written undertaking from the allottees that he will not sell the vehicle for a period of three years from the date of delivery.

Order dated September 3, 1987 in C.M.P. Nos. 25666-67 (in W.P. Nos. 588/84 & 11716/84) and C.M.P. Nos. 41688-89/84 (in W.P. Nos. 588 & 11716/84). [1987(2) SCALE 689]

(b) Second allotment to the same individual out of manufacturers' quota could be made after lapse of four years from the date of collection of the vehicle in the previous allotment.

(c) In each of the aforesaid categories, allotment so far as possible, will be made on first come first served basis in accordance with the date of receipt of the application for allotment out of MQ. In cases where more than one application is received on the same day from individuals in the same category, priority of allotment in such cases will determined by draw of lots under proper supervision.

(d) In case there are any surplus vehicles available for allotment under MQ in one or more categories then the same will be allocated to other categories.

It is clarified that allotments made for military/para-military, fleet customers for use as taxi, against payments in foreign exchange, export order for supply outside India will not be included within 5% of the MQ.

These guidelines will be in force for a period of three years.

Subject to the conditions stipulated here in above the following shall be proposed guidelines on MQ Allotment.

Category No.	*Particulars of Category*	*Percentage of MQ. Allotment*
I.	Any organisation/institution coming within the definition State under Article 12 of the Constitution of India.	20%
II.	Any hospital or recognised charitable organisation or educational institution, registered or incorporated under a statute or having the recognition under Section 80 G of the Income Tax Act, 1961.	15%
III.	*Individuals:*	
	(a) President of India, Vice-President of India, Members of Council of Ministers in the Union or State, Governors of States, Speaker/ Dy. Speaker of Lok Sabha, Chairman/ Dy. Chairman of Rajya Sabha, Speaker of State Legislative Assemblies, Chair persons of State Legislative Councils.	One vehicle per person holding the office mentioned.
	(b) Members of Parliament.	7.5%
	(c) The Chief Justice and other judges of the Supreme Court of India and Chief Justice and other judges of the High Courts, Registrar of the Supreme Court of India.	7.5%
	(d) The Auditor & Controller General of India, Attorney General of India and Chair persons of the Commissions set up/to be set up by the Union. The Chairman of the Union Public Service Commission, the Chief Election Commissioner.	One vehicle per person holding the office mentioned.

	(e) Public servants not below the rank of Jt. Secretaries in the Govt. of India and officers holding equivalent posts and other public servants like doctors, scientists and other experts in equivalent pay-scales.	17%
	(f) Members of the Armed Forces not below the rank of Maj. General in the Army or equivalent rank in the Navy or Air Force.	17%
	(g) Winners of international/national awards in recognition of outstanding contribution in the fields of art, culture, humanity, sports and literature.	10 Vehicles
	(h) Individuals in recognition of their outstanding services to the society or to nation.	10 Vehicles
	(i) Individual cases of undue hardship on compassionate grounds.	10 Vehicles.
	(j) Journalists, doctors, lawyers and professors.	5%
	(k) Joint Venture companies of MUL and manufacturers of component parts for utilisation in the manufacture of Maruti vehicles and MUL dealers.	6%
	(l) Employees of the Company	*(sic)*
	(m) Institutions/individuals not otherwise covered above, in the commercial interest of MUL as approved by MUL Board.	*(sic)* Vehicles
IV	Retired persons of the categories eligible.	5%
V	*Error Category* Individuals whose applications for regular allotment could not be registered on account of any genuine error.	

SCALE (PIL) 1981-97 1745

RURAL LITIGATION & ENTITLEMENT KENDRA *Petitioner*

VS

STATE OF U.P. *Respondent*

CORAM: RANGANATH MISRA AND MURARI MOHAN DUTT, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — ENVIRONMENTAL AND

Order dated October 19, 1987 in W.P. Nos. 8209 & 8821 of 1983 with (W.P. Nos. 959/87, 1770/86 & 876/87). [1987(2) SCALE 790]

ECOLOGICAL BALANCE — Maintenance of Quarrying and excavation of lime stone deposits for industrial purposes — Reported in 1985(1) SCALE 408 — Further directions issued.

1. A three Judge Bench consisting of one of us by judgment dated March 12, 1985, reported in (1985) 2 SCC 431 made a detailed order regarding the working of the lime stone quarries in the Dehradun-Mussorie belt. The quarries in that area were classified into three categories being A, B and C. In regard to the C grade quarries, this Court ordered :

> "We are clearly of the view that so far as the lime stone quarries classified in category C in the Bhargav Committee Report are concerned which have already been closed down under the directions of the Bhargav Committee, should not be allowed to be operated. If the lessees of these lime stone quarries have obtained any stay order from any court permitting them to continue the mining operation, such stay order will stand dissolved and if there are any subsisting leases in respect of any of these lime stone quarries they shall stand terminated without any liability against the State of Uttar Pradesh. If there are any suits or writ petitions for continuation of expired or unexpired leases in respect of any of these lime stone quarries pending, they will stand dismissed."

Thus in regard to the C grade quarries, the dispute has ended.

2. Coming to category B quarries, the Bhargav Committee Report this Court held such lime stone quarries should not be allowed to be operated and should be closed down forthwith. Similarly the B category stone quarries in the report of the working group other than mining lease Nos. 31, 36 and 37 were directed also to be closed down finally and this Court further directed:

> "If there are any subsisting leases in respect of any of these lime stone quarries they will forthwith come to an end and if any suits or writ petitions for continuance of expired or unexpired leases in respect of any of these lime stone quarries are pending, they too will stand dismissed.

In regard to the remaining B category lime stone quarries, in paragraph 10 of the Judgment this Court dealt with the question at length; the lessees were directed to submit schemes to the Committee and the Committee was directed to examine such schemes at length and make a full report to the Court. This Court indicated :

> "The report submitted by the Bandyopadhyay Committee in each case will be considered by the Court and a decision will then be taken whether the lime stone quarry or quarries in respect of which the report has been made should be allowed to be operated or not. But until then these lime stone quarries will not be allowed to be operated or worked and the district authorities of Dehradun will take prompt and active steps for the purpose of ensuring that these lime stone quarries are not operated or worked and no mining activity is carried on even clandestinely. This order made by us will supersede any stay or any other interim order obtained by the lessee of any of these lime stone quarries permitting him to carry on mining operations and notwithstanding such a stay order or other interim order or subsisting lease, the lessees shall not be entitled to carry on any mining activity whatsoever in any of these lime stone quarries and shall desist from doing so."

The Court took note of the fact that Sl. Nos. 17 to 20 in category B of the Bhargav Committee report had already closed down and, therefore, no direction was necessary to be given in regard to them save and except in regard to removal of the lime stone or marble chips already gathered.

3. In regard to the A category lime stone quarries of the Bhargav Committee report, the judgment classified the stone quarries into two groups-those which were located within the Mussoorie municipal limits and the others which were not so located. In regard to the stone quarries of the A category within the municipal limits the same direction as given in respect of the B category stone quarries referred to above, was given. In regard to the remaining A category stone quarries, it was observed :

> "We take the view that the lime stone quarries falling within category A of the Bhargav Committee Report and/or category I of the Working Group Report and falling outside the city limits of Mussoorie should be allowed to be operated subject of course to the observance of the requirements of the Mines Act, 1952, the Metalliferous Mines Regulations, 1961 and other relevant statutes, rules and regulations. Of course when we say this we must make it clear that we are not holding that if the leases in respect of these lime stone quarries have expired and suits or writ petitions for renewal of the leases are pending in the courts, such leases should be automatically renewed. It will be for the appropriate courts to decide whether such leases should be renewed or not having regard to the law and facts of each case."

4. The Bhargav Committee examined the schemes drawn up by the stone quarry lessees and has submitted its report. With reference to the said report, 15 lessees have filed their objections. We have heard each of the objectors and have also given a hearing to some of the A category lessees located outside the city limits.

5. It is relevant at this stage to take note of a subsequent order rendered by a two-Judge Bench of which one of us was a party in these very cases-(1986) Suppl. SCC 517. On that occasion, this Court pointed out :

> "The Himalayan range on the northern boundary of India is the most recent mountain range and yet it is the tallest. It has formed the northern boundary of the country and until recent times provided an impregnable protection to the Indian sub-continent from the northern direction. This mountain range has been responsible to regulate the monsoons and consequently the rainfall in the Indo-Gangetic belt. The Himalayas are the source for perennial rivers-the Gangas, Yamuna and Brahmaputra as also several other tributaries which have joined these main rivers. For thousands of years nature has displayed its splendour through the lush green trees, innumerable springs and beautiful flowers. The Himalayas has been the store house of herbs, shrubs and plants. Deep forests on the lower hills have helped to generate congenial conditions for good rain."
>
> "The Doon valley has been an exquisite region bounded by the Himalayan and the Shivalik ranges and the Ganga and Yamuna rivers. The perennial water streams and the fertile soil have contributed not only to the growth of dense lush green forests but have helped the yield of basmati rice and `leechis'. Mussoorie, known as the queen of Indian hill stations situated at a height of 5,000 feet above sea level and Dehradun located below the heights have turned out to be important places of tourists attraction, centres of education, research and defence complex."
>
> "At present the valley is in danger because of erratic, irrational and

> uncontrolled quarrying of limestone. The landscape has been stripped bare of its verdant cover. Green cover today is about 10 per cent of the area while some decades ago it was almost 70 per cent.......”

Consciousness regarding environmental upkeep is of recent origin. Cognizance of ecological importance has entered into governmental activity only in this decade. Every day that consciousness as also the sense of social obligation in this regard are on the increase. It has been pointed out to us in course of hearing of the objections that the classification of the A category lime stone quarries on the basis of their location-within the municipal limits and outside-was indeed not a real one. We have been shown and it seems to be factually true that some of the lime stone quarries said to be outside the city limits are closer to the heart of the city of Mussoorie than others located within city limits. If the real purpose of the order made by this Court was not to permit mining within the city limits without further scrutiny as in the case of B category stone quarries, we really do not see any justification as to why these stone quarries located outside the city limits but close to the heart of the city should not have been subjected to such scrutiny. Since the writ petitions have been finally disposed of and the order made in regard to the A category quarries located outside the city limits by the judgment referred to above only exempted them from further scrutiny as was directed in respect of the other quarries, we see no impediment in the matter of giving a re-look at the matter even with reference to the A category quarries located outside the city limits.

6. In this connection it is relevant to take note of the fact that the State Government has already formed an improvement programme of the area by constituting a combined body for Mussoorie and Dehradun. The considerations which had weighed with the Court on the basis of municipal limits has indeed to be extended now to the entire area covered by the new scheme. We are, therefore, of the view that the A category stone quarries in this area irrespective of location within or outside city limits should be subjected to further order of this Court and there is no legal impediment for this Court to do the same.

7. Indisputably the extraction of lime stone from this area satisfies roughly 3 per cent of the country’s demand for such raw material but one important feature is that the quality of the material is invariably above 97 per cent purity. It may be that lime stone of this grade would not be available in other areas. Parties have not placed material before the Court in this regard. There has been some allegation that on account of the closure of mining activities in this area, the import of lime stone had to go up and the country had to pay for the same in foreign currency.

8. We are of the view that stone quarrying in the Doon Valley area should generally be stopped and reasons thereof we shall provide in due course. At the same time it would be difficult to overlook the economic and defence interest of the country. There is material on record that for production of sophisticated defence armaments it is necessary to utilise this high grade lime stone. As we have already pointed out, the question of foreign exchange is also involved. This aspect of the matter had not been considered by the Court earlier and even the Union of India has not placed the exact material relevant to come to a conclusion by taking into consideration the requisite material.

9. While we reiterate our conclusion that mining in this area has to be stopped as far as practicable, we also make it clear that mining activity has to be permitted to the extent it is necessary in the interests of the defence of the country as also for the safeguarding of the foreign exchange position. We call upon the Union of India in the relevant ministry or ministries to place before the Court on affidavit the minimum total requirement of this grade of lime stone for manufacture of quality steel and defence armaments. The affidavit should also specify as to how much of high grade ore is being imported into the country and as to whether other indigenous sources are available to meet such requirement. This Court would also require an affidavit from responsible authorities of the Union of India as to whether keeping the principles of ecology, environmental protection and safeguards and anti-pollution measures, it is in the interests of the Society that the requirements should be met by import or by tapping other alternate indigenous sources or mining activity in this area should be permitted to the limited extent. The Court expects the Union of India to balance these two aspects and place on record its stand not as a party to the litigation but as a protector of the environment in discharge of its statutory and social obligation for the purpose of consideration of the Court by way of assisting the Court in disposing of the matters in issue. If the Court comes to the conclusion that the minimum requirement of lime stone will be permitted to be lifted from some of these lime stone quarries, it shall be for the Court to indicate as to which of the quarries shall be operated for that limited purpose. We make it clear that whichever quarries may be permitted to be worked out the same shall be subjected to strict control and regulations and would have to undertake acceptance of the obligation to maintain the green cover of the area by diverting a major portion of its profits.

10. The Court intends to constitute a superintending body for effective control of the environment and ecology in the area by appointing a committee of experts, public authorities, residents and such other persons as may be approved by the Court. In due course we shall advert to that aspect.

11. Four weeks' time is allowed to the Union of India to file its affidavits in regard to what has been stated above. The petitions may be listed on 17th November, 1987 for further hearing on this limited point.

SCALE (PIL) 1981-97 1749

CHARAN LAL SAHU *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: RANGANATH MISRA AND K.N. SINGH, JJ.

PUBLIC INTEREST LITIGATION — JUDICIARY — APPOINTMENT OF JUDGES — Court issues notice to UOI and also contempt notice to another (Reported in 1987 (2) SCALE 754).

IN WRIT PETITION NO. 849/87

1. Writ Petition is dismissed in terms of the signed order placed on the file.

2. Issue notice to the petitioner returnable on 9.11.1987 to show cause in person as to why he may not be proceeded under the Contempt of Court Act.

IN WRIT PETITION NO. 1303/87

3. A copy of the petition is handed over to learned Attorney General in Court. Issue notice to Union of India also returnable on 2nd November, 1987.

Order dated October 9, 1987 in W.P. (C) No. 849/87 with 1303 of 1987. [1987(2) SCALE 821]

SCALE (PIL) 1981-97 1750

SANJAY SURI & ANR. *Petitioners*

VS

DELHI ADMINISTRATION, DELHI & ANR. *Respondents*

CORAM: RANGANATH MISRA AND MURARI MOHAN DUTT, JJ.

PUBLIC INTEREST LITIGATION — RIGHTS OF CHILDREN — JUVENILE UNDERTRIAL PRISONERS — Conditions relating to juvenile undertrial prisoners at Central Jail at Tihar — Disposing of the writ petitions — Court issued directions.

Ranganath Misra, J.— These two applications under Article 32 of the Constitution are in the nature of a public interest litigation. A news reporter and a trainee sub-editor have moved this Court for appropriate directions to the Delhi Administration and the authorities of the Central Jail at Tihar, pointing out features of mal-administration within the jail relating to juvenile undertrial prisoners. During the pendency of the proceedings, the Court made several orders with reference to juvenile prisoners and undertrials. On 28th October, 1983 this Court directed :

> "When these writ petitions came up for hearing before us we had certain hesitation in entertaining them because another petition was pending in the High Court of Delhi in regard to juvenile prisoners in Tihar Jail where some directions had been given by the High Court and we were anxious to avoid a parallel investigation particularly since in matters of this kind it is desirable that the High Courts should be activised. But since no inquiry into the conditions prevailing in the Tihar Jail, in so far prisoners in the juvenile ward are concerned, had been ordered and what was ordered was only a limited inquiry relating to medical examination of 7 juvenile prisoners who were directed to be produced in court, we thought that we would be failing in our constitutional duty if we do not take judicial action and direct the District Judge to visit Tihar Jail for making inquiry into the conditions prevailing in the Tihar Jail in so far as the prisoners in the juvenile ward are concerned. We decided to entrust this task to the District Judge because he is even otherwise visitor at the Tihar Jail and we thought it would be better to send an officer who is ultimately responsible for ensuring proper conditions in the Tihar Jail rather than entrust this work to an outside organisation or agency. We are glad that we made this order because the Report made by the District Judge discloses a shocking state of affairs in so far as juvenile prisoners are concerned. The District Judge has interviewed some of the juvenile prisoners in regard to whom he learnt, as a result of the inquiry made by him, that they had been subjected to sexual assault by the adult prisoners. The juvenile prisoners who made statements before the District Judge have expressed apprehension that they might get into difficulties and be victimised if their names are disclosed and the District Judge has also suggested in his Report that either the names should not be disclosed or if the names of these juvenile prisoners are disclosed, adequate protection should be granted to them. We do not think it would be right not to disclose the names of these juvenile

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Judgment dated December 9, 1987 in W.P. (Crl.) Nos. 2546-47 of 1983. [1987(2) SCALE 1257] prisoners while supplying copies of the Report of the District Judge to the advocates of the parties but we do think it necessary to provide adequate protection to them. We would, therefore, direct that the following undertrial juvenile prisoners, namely, ... shall be released immediately in the course of the day on their executing a bond of Rs. 500/- each before the Superintendent of Tihar Jail. There are also three convicted juvenile prisoners in the Tihar Jail, namely. .... who have given statements to the District Judge. They should be released forthwith on parole for a period of one month on their executing a bond for Rs. 500/- each before the Superintendent of Tihar Jail that they will surrender themselves to the jail authorities on the expiration of the period of one month. The release of these three convicted juvenile prisoners on parole will also be done in the course of the day. We may make it clear that we are making this order for release of the aforementioned juvenile prisoners-undertrial as well as convicted-only with a view to protecting them and we are, at the present moment, not passing upon the correctness or otherwise of the statements made by them.

The learned Additional Solicitor General on behalf of the respondents states that Munshi Rajinder Singh alias Raju will be forthwith transferred from the Tihar Jail and that in any other jail to which he is transferred, it will be ensured that he does not have anything to do at all with juvenile prisoners. This transfer shall also be carried out forthwith. Meanwhile, the Superintendent of Tihar Jail will take steps to ensure that Munshi Rajinder Singh alias Raju is not allowed any assess to the juvenile ward and is also not allowed to come into contact in any manner whatsoever with the prisoners in the juvenile ward and this will be the personal responsibility of the Superintendent of Tihar Jail. So far as the warder Onkar Singh (who has also been referred to in the report of the District Judge) is concerned, the learned Additional Solicitor General appearing on behalf of the respondents states that immediate steps will be taken to place him under suspension and in the meanwhile, he will not be allowed to go inside the premises of Tihar Jail. The Superintendent of Tihar Jail will also ensure that no juvenile prisoner is directed to go to the cell of any adult prisoner or prisoners or to do any work for them including cooking or cleaning. The learned Additional Solicitor General states on behalf of the respondents that there are a number of juvenile undertrial prisoners whose cases require to be considered for the purpose of releasing them on bail and that he would prepare a chart setting out the names and particulars of these undertrial prisoners and place such chart before the Court on 31st October, 1983 for passing appropriate orders.....".

On the 31st October, 1983, the Court made a further order to the following effect :

> "......The learned counsel for the respondents will intimate to the Court as to which of the 131 juvenile prisoners confined in Tihar Jail whose names as mentioned in the chart handed over by the learned Additional Solicitor General appearing on behalf of the respondents are to be released on bail, having regard to the nature of the offences alleged to have been committed by them and other relevant circumstances which have already been set out by this Court in *Hussainara Khatoon's* case. We would also like to know as what is the procedure

> being followed by the Courts of Metropolitan Magistrates in Delhi when a young accussed is produced before them for the purpose of ascertaining whether he is a child or not within the meaning of the Children's Act and if he is not a child and is sent to judicial custody then what is the procedure being followed by the Superintendent of the Tihar Jail for determining whether he is a juvenile within the meaning of Jail Manual where a juvenile is defined as a prisoner who has not attained the age of 18 years. We are anxious to ensure that no child within the meaning of the Children's Act is sent to the jail because otherwise the whole object of the Children's Act of protecting the child from bad influence of jail life would be defeated. It is also a matter of anxiety for us to see that juveniles between the age of 16 to 18 years who put in custody in the jail are being kept in separate ward and are allowed to intermingle with adult prisoners because that would also expose them to mal-influences which may prevent their proper rehabilitation......".

Several other interlocutory orders and directions were given and the Sessions Judge was requested to visit the jail on more than one occasion under order of the Court. He made very useful reports. As a result of these exercises taken during the pendency of the writ petitions, one substantial achievement has been that Tihar Jail no more accommodates juvenile delinquents and their jail has been separated. On account of the repeated directions from this Court the jail administration has now been obliged to undertake erection of a separate jail as an additional place for housing juvenile prisoners and undertrials and the construction is coming up, as reported. On account of the exposure, the jail administration has been obliged to place the administration of the jail in the hands of a superior officer.

2. Monitoring the affairs of a jail is a difficult job for this Court but on account of the fact that the Tihar Jail is in the Capital of the country and on account of the advantages of publicity available through the media and otherwise, affairs of the jail have received due publicity over the last four years where these matters have been pending before this Court and it is time that we should dispose them of finally.

3. We had called upon counsel for the parties to furnish their suggestions for improvement of the jail administration and pursuant to this direction counsel for the petitioners has given certain suggestions on two instalments. Learned Additional Solicitor General has also joined her in making certain suggestions in that regard. Before we refer to them we think it appropriate to emphasise that those who are incharge of the jail administration from bottom to top must develop the proper approach to deal with the prisoners and undertrials. It is true that a considerable number of hardened prisoners live in the jail and those who have a longer term of sentence to suffer stay on for quite a part of their life behind the prison bars. Longer stay at one place brings in familiarity and familiarity generates a number of human reactions. There is no provision in the jail manuals and, perhaps it is difficult as a rule to adopt, that the long-term prisoners should keep on shifting from jail to jail. Whatever may have been the philosophy of punishment in the past, today the prison house is looked upon as a reformatory and the years spent in the jail should be with a view to providing rehabilitation to the prisoner after the sentence is over. That would not be possible over-night and, therefore, cannot be deferred to materialise on the date of release. The wrong side has to be given up and the virtuous way of living has to be acquired. Both are difficult processes. Therefore, the prison house, in case

the true purpose is to be achieved, has to provide the proper atmosphere, leadership, environment, situations and circumstances for the regeneration. Members of the staff of the jail from bottom to top (we have purposely not said top to bottom) must be made cognizant of this responsibility and that awareness must be reflected in their conduct. Judicial notice can be taken of prevailing conditions in our jails and what we have stated above is still utopian. But if a change has to brought about it has to start from somewhere and Tihar Jail, in our opinion, is probably most suited for that purpose being located at the seat of the national capital and being under the direct management of the Union of India (through, of course, the Delhi Administration). This can be the institution to set the move in motion.

4. The work load of superintendence should be distributed in a graded way and the officers should have the direct charge of such divided responsibilities. It is necessary that a large dose of good living should be introduced into jail life. Ordinarily religious teaching would carry a level of elevation in that regard. Ours being a Secular State there may perhaps be in immediate counter-reaction to religion being tolerated anywhere but we never intend to speak of that religion which is enigmatic to the concept of secularism. We refer to the essence of all religions-a factor common to every religion humanism-which is so much necessary for good living. We hope and trust that the jail administration and in particular the Administrator would take into consideration this aspect and try to generate a sense of humanism in these officers and those in the ranks below them so that the prisoners should have direct contact with them and benefit by every contact with those officers in getting round to the right approach in life.

5. It is time to turn to brass facts. We have come across cases where the warrant, be it for the undertrial or the prisoner, when sent by the court does not indicate the age of the prisoner authorised to be detained in the jail. This is a very wrong practice and is obviously in breach of the direction issued by this Court. We call upon every Magistrate or trial Judge authorised to issue warrants for detention of prisoners to ensure that every warrant authorising detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age-not necessarily by a trial-and every warrant must specify the age of the person to be detained. We call upon the authorities in the jails throughout India not to accept any warrant of detention as a valid one unless the age of the detenue is shown therein. By this order of ours, we make it clear that it shall be open to the jail authorities to refuse to honour a warrant if the age of the person remanded to jail custody is not indicated. It would be lawful for such officers to refer back the warrant to the issuing court for rectifying the defect before it is honoured. Since it will create problems in keeping the undertrial or the prisoner during the intervening period, the judicial officer should realise his responsibility in accepting this direction and giving full effect to it. In exceptional cases, when the warrant is referred back for rectification, the person covered by the warrant may be kept at the most for a week pending rectification, and taking responsibility of the situation. On the basis of the age indicated in the warrant, it shall be the obligation of the jail authorities to find out, so far as Delhi is concerned, whether the prisoner covered by the warrant should be detained in the Tihar Jail or in the Juvenile Jail.

6. Though the place of stay has now been segregated, there is possibility of contact between the hardened criminals and the juvenile delinquents if there is no proper segregation in assignment of work. We direct that due care shall be taken to ensure that the juvenile delinquents are not assigned work in the same area where regular prisoners are made to work. Care should be taken to ensure that there is no scope for their meeting and having contacts.

7. We direct that steps should be taken to shift the warders at the end of every three years. This is a principle which had been accepted in the Punjab Jail Manual (Chapter VI, Rule 273). Delhi Administration has a difficulty in doing so in a real way because it has only one jail and may have one more when the other jail under construction comes up, but there is no other place to which warders can be transferred. The Administration should take note of the situation; the rules should be changed and the warders may either be interchanged with some other category of service working outside the jail or a common Union Territory service could be set up to permit the same. Such transfer will indeed be helpful in restoring discipline in the jail.

8. The Visitor's Board should consist of cross sections of society; people with good background, social activists, people connected with the news media, lady social workers, jurists, retired public officers from the Judiciary as also the Executive. The Sessions Judge should be given an acknowledged position as a visitor and his visits should not routine ones. Full care should be taken by him to have a real picture of the defects in the administration *qua* the resident prisoners and undertrials.

9. Over-crowding in jails is a regular feature. As against a sanctioned capacity of 2,023, on the average 4,000 prisoners are lodged in the Tihar Jail. We hope and trust that this aspect will be kept in view, though from a practical point over-crowding may to a reasonable aspect, have to be tolerated. We hope with the commissioning of the new jail, pressure in this regard to some extent would be reduced.

10. The writ petitions are disposed of with these directions. There would be no order for costs.

11. We place on record our appreciation of the services rendered by the petitioners by bringing the matter before the Court.

SCALE (PIL) 1981-97 1754

P. RATHINAM *Petitioner*

VS

STATE OF GUJARAT *Respondent*

CORAM: S. NATARAJAN AND M.N. VENKATACHALIAH, JJ.

PUBLIC INTEREST LITIGATION — RAPE — STATE OF GUJARAT — Allegations against Police Officers in the State of Gujarat in regard to offences of rape — Further directions given.

1. The facts placed before us disclose the pathetic state of affairs. In the affidavit filed on 20 January, 1987 a statement was made by the Deputy Secretary of the State Government indicating the stage at which proceedings have been taken in respect of the several officers mentioned in the report submitted by the Joseph Commission. Thereafter an affidavit dated 16 November, 1987 was filed by the Joint Secretary of the State Government. On a

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Order dated December 7, 1987 in W.P. (Crl.) No. 92 of 1986 (with appln. for directions & Cr. M.P. No. 263/87). [1987(2) SCALE 1464] comparison of the contents of the two affidavits it is clear that no serious attempt has been made to pursue the matter.

2. We are not satisfied with the affidavits before us and we think it necessary to have the entire original record before us indicating how the State Government has acted in each case in order to give effect to the Orders made by this Court from time to time in this matter. The case will be listed on 12 January, 1988 along with that record. The record will be brought before this Court by learned counsel for the State Government. In this case where proceedings have been initiated against the persons mentioned in the report of Joseph Commission copies of charge sheet shall be handed over to learned counsel for the petitioner and State Government.

SCALE (PIL) 1981-97 1755

SHAHEEN WELFARE ASSOCIATION *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: A.M. AHMADI, CJI. AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — PREVENTIVE DETENTION — TADA — UNDERTRIAL PRISONERS — SPEEDY TRIAL — Court, while indicating the approach of the courts in the matter of granting bail, issued directions for speedy trial and stated conditions subject to which the bail could be granted.

Referred: Kartar Singh vs State of Punjab [1994(3) SCC 569 = 1994 Supp.(1) SCALE 1]; Supreme Court Legal Aid Committee representing Undertrial Prisoners vs Union of India & Ors. [1994(6) SCC 731 = 1994(4) SCALE 452].

Mrs. Sujata V. Manohar, J.— This is a public interest litigation in which the petitioner has prayed for certain reliefs to undertrial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA'). The petitioner has asked, inter alia, for a direction that the respondents should file a list of detenus lodged in jails in different States under TADA and has asked for a direction for the release of TADA detenus against whom proper evidence is not with the prosecution and where proper procedure prescribed under law is not followed.

2. Under orders passed from time to time in this petition the States of Gujarat, Rajasthan and Maharashtra as well as the Central Government have filed affidavits giving information relating to the number of cases under TADA pending in different Designated Courts in various States of the country. We have also been furnished with the Statewise numbers of Designated Courts constituted under TADA. In the affidavit filed on behalf of the Union of India by Shri A.K. Shrivastava, Deputy Secretary to the Government of India, Ministry of Home Affairs, New Delhi, a statement is annexed showing live cases under TADA and the number of Designated Courts in different States and Union Territories. The statement is as follows:

Judgment dated February 27, 1996 in W.P. (Crl.) No. 117 of 1995 [1996(2) SCALE 481]

Sr. No.	*Name of the State/UT*	*No. of live cases under TADA*	*No. of Designated Courts*
(1)	(2)	(3)	(4)
1.	Andhra Pradesh	1937	61
2.	Arunachal Pradesh	15	11
3.	Assam	2908	1
4.	Bihar	4	35
5.	Gujarat	72	18
6.	Haryana	348	8
7.	Himachal Pradesh	5	3
8.	Jammu & Kashmir	5041	4
9.	Karnataka	25	19
10.	Kerala	-	1
11.	Manipur	603	4
12.	Madhya Pradesh	76	10
13.	Maharashtra	244	8
14.	Meghalaya	8	1
15.	Punjab	2248	18
16.	Rajasthan	77	1
17.	Tamil Nadu	26	5
18.	Uttar Pradesh	39	15
19.	West Bengal	1	18
20.	Chandigarh Admn.	9	2
21.	Delhi	759	4
22.	Goa	1	1
	Total :-	14446	248

Thus, for example, in the State of Assam the number of live cases are 2908. There is only one Designated Court to try all these cases. In Jammu & Kashmir, there are only four Designated Courts for trial of 5041 cases. In Rajasthan there is only one Designated Court for the trial of 77 cases while in Delhi there are four Designated Courts for the trial of 759 pending cases. The number of Designated Courts is also somewhat deceptive in the sense that in some States the existing Sessions Courts are also designated as courts under TADA, with the result that these courts do not deal exclusively with the trial of TADA cases. They also deal with other criminal cases. Therefore, the entire time of such courts is not available for the trial of TADA cases.

It is quite clear that in many States there is no prospect of a speedy trial of pending TADA cases. A Statement which is annexed to an earlier affidavit filed on behalf of the Union of India by Shri R.S. Tanwar, Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi, shows that in respect of 14446 cases under investigation and pending trial in the various States of the country, the detentions involved are 42488, out which the number of persons actually arrested and under detention is 5998. Those released on bail are 30357, and those absconding and yet to be arrested are 6044. This is after taking into account the cases which were received by the State Review Committees, and were either withdrawn or where charges under the provisions of TADA were dropped. The total number of cases so received comes to 9203 and the number of persons discharged from TADA provisions are 7968.

3. The National Human Rights Commission has also furnished a statement showing the position of TADA detenus in jail as on 30.6.1995. While the Statewise figures given by it do not tally with the figures given by the Union of India, the total number of undertrials in jail according to the National Human Rights Commission is 6000, (after taking into account its corrections for Assam, Punjab and Rajasthan) which is close to the figure of 5998 given by the Union of India.

4. It is in this context that we have to consider what relief can be granted to detenus under TADA. In the case of *Kartar Singh vs State of Punjab* (1994(3) SCC 569) this Court while considering the validity of Section 20(8) of TADA, has observed that while liberty of a citizen must be a zealously safeguarded by the courts, nonetheless the courts while dispensing justice in cases like the one under TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victims and their near and dear ones and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution. It also observed that the invocation of the provisions of TADA in cases, the facts of which do not warrant its invocation, is nothing but sheer misuse and abuse of the Act by the police.

5. Looking to the nature of the crime and the paramount interests of the society this Court held that the conditions imposed under Section 20(8) for the release of TADA undertrials on bail did not violate Articles 14 and 21 of the Constitution. It, however, gave directions for the constitution of Review/ Screening Committees in each State and at the Centre to ensure that the provisions of TADA were correctly invoked in the cases pending before the Designated Courts. The purpose of constituting such committees was to ensure a higher level of scrutiny regarding applicability of the provisions of TADA to the case in point. The need for such committees is amply borne out by the results which have been annexed in the affidavits filed on behalf of the Union of India before us relating to the number of cases so reviewed by the Review Committees where it has been found that the provisions of TADA ought not to have been applied. We are, however, sorry to note that not a single case filed by C.B.I. has been so reviewed although the Review Committee, it is said, has examined all the cases. A more independent and objective scrutiny of these cases by a Committee headed by a retired judge is obviously necessary.

6. Inspite of such review, from the figures which we have cited above, it is clear that there is very little prospect of a speedy trial of cases under TADA in some of the States because of the absence of an adequate number of Designated Courts even in cases where a chargesheet has been filed and the cases are ready for trial. We are conscious of the fact that even the trial of ordinary criminal cases does take some time because of the courts being overloaded with work and the concept of a speedy trial in the case of TADA cases must be viewed in the context of pendency in relation to criminal trials also. But when the release of under-trials on bail is severely restricted as in the case of TADA by virtue of the provisions of Section 20(8) of TADA, it becomes necessary that the trial does proceed and conclude within a reasonable time. Where this is not practical, release on bail which can be taken to be embedded in the right of a speedy trial may, in some cases, be necessary to meet the requirements of Article 21.

7. It was on this basis that in the case of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs Union of India & Ors.* (1994 (6) SCC 731), this Court considered similar provisions restricting the grant of bail under Narcotic Drugs and Psychotropic Substances Act, 1985 and directed release of undertrials on bail in certain situations and subject to the terms and conditions set out there. The Court while doing so observed, (p. 748): "....... we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters."

8. It is in this context that it has become necessary to grant some relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of the trial being concluded in the near future. Undoubtedly, the safety of the community and of the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary.

9. The petition thus poses the problem of reconciling conflicting claims of individual liberty versus the right of the community and the nation to safety and protection from terrorism and disruptive activities. While it is essential that innocent people should be protected from terrorists and disruptionists, it is equally necessary that terrorists and disruptionists are speedily tried and punished. In fact the protection to innocent civilians is dependent on such speedy trial and punishment. The conflict is generated on account of the gross delay in the trial of such persons. This delay may contribute to absence of proper evidence at the trial so that the really guilty may have to be ultimately acquitted. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted, but who remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA. They suffer severe hardship and their families may be ruined.

10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in *Kartar Singh's case* (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.

11. These competing claims can be reconciled by taking a pragmatic approach.

12. The proper course is to identify from the nature of the role played by each accused person the real hardcore terrorists or criminals from others who do not belong to that category; and apply the bail provisions strictly in so far as the former class is concerned and liberally in respect of the latter class. This will release the pressure on the courts in the matter of priority for trial. Once the total number of prisoners in jail shrinks, those belonging to the former class and, therefore, kept in jail can be tried on a priority basis. That would help to ensure that the evidence against them does not fade away on account of delay. Delay may otherwise harm the prosecution case and the harsh bail provisions may prove counter-productive. A pragmatic approach alone can save the situation for, otherwise, one may find that many of the undertrials may be found to have completed the maximum punishment provided by law by being in jail without a trial. Even in cases where a large number of persons are tied up with the aid of Sections 120B or 147, I.P.C., the role of each person can certainly be evaluated for the purpose of bail and those whose role is not so serious or menacing can be more liberally considered. With inadequate number of courts, the only pragmatic way is to reduce the prison population of TADA detenus and then deal with hardcore undertrials on priority basis before the evidence fades away or is lost. Such an approach will take care of both the competing interests. This is the approach which we recommend to courts dealing with TADA cases so that the real culprits are promptly tried and punished.

13. For the purpose of grant of bail to TADA detenus, we divide the undertrials into three classes, namely, (a) hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract Sections 3 and/or 4 of the TADA Act; (c) undertrials who are roped in, not because of any activity directly attracting Sections 3 and 4, but by virtue of Sections 120B or 147, I.P.C., and; (d) those undertrials who were found possessing incriminating articles in notified areas and are booked under Section 5 of TADA.

14. Ordinarily, it is true that the provisions of Sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealt with by the same yardstick. Different approaches would be justified on the basis of the gravity of the charges. Adopting this approach we are of the opinion that undertrials falling within group (a) cannot receive liberal treatment. Cases of undertrials falling in group(b) would have to be differently dealt with, in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant, the family members of the complainant, or witnesses. Cases of undertrials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in jail for three years and two years respectively. Those falling in group (b), when released on bail, may be released on bail of not less than Rs. 50,000/- with one surety for like amount and those falling in groups (c) and (d) may be released on bail on their executing a bond for Rs. 30,000/- with one surety for like amount, subject to the following terms:

> (1) the accused shall report to the concerned police station once a week;
>
> (2) the accused shall remain within the area of jurisdiction of the Designated Court pending trial and shall not leave the area without the permission of the Designated Court;
>
> (3) the accused shall deposit his passport, if any, with the Designated Court. If he does not hold a passport, he shall file an affidavit to that effect before the Designated Court. The Designated Court may ascertain the correct position from the passport authorities, if it deems it necessary;
>
> (4) The Designated Court will be at liberty to cancel the bail if any of these conditions is violated or a case for cancellation of bail is otherwise made out.
>
> (5) Before granting bail, a notice shall be given to the public prosecutor and an opportunity shall be given to him to oppose the application for such release. The Designated Court may refuse bail in very special circumstances for reasons to be recorded in writing.

15. These conditions may be relaxed in cases of those under groups (c) and (d) and, for special reasons to be recorded, in the case of group (b) prisoners. Also these directions may not be applied by the Designated Court in exceptionally grave cases such as the Bombay Bomb Blast Case where a lengthy trial is inevitable looking to the number of accused, the number of witnesses and the nature of charges unless the court feels that the trial is being unduly delayed. However, even in such cases it is essential that the Review Committee examines the case against each accused bearing the above directions in mind, to ensure that TADA provisions are not unnecessarily invoked.

16. The above directions are a one-time measure meant only to alleviate the current situation.

17. When stringent provisions have been prescribed under an Act such as a TADA for grant of bail and a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods. It is unfortunate that none of the States to whom notices have been issued by us nor the Union of India, have come forward to state that they would set up an adequate number of Designated Court in each State so that cases pertaining to TADA can be speedily disposed of. This has necessitated the above order as a one-time measure.

18. With the above directions, the writ petition is disposed of.

SCALE (PIL) 1981-97 1760 .

DR. P. NALLA THAMPY THERA *Petitioner*

VS

UNION OF INDIA & ORS. *Respondents*

CORAM: P.N. BHAGWATI, AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 32 — RAILWAYS — Petition seeking mandamus to Government of India for implementation of the reports of Kunzru, Wanchoo and Sikri Committees — Held,

A. Giving directions in a matter like this where availability of resources has a material bearing, policy regarding priorities is involved, expertise is very much in issue, is not prudent. (Para 24).

B. The Court, however, hoped that early steps shall be taken to implement in a phased manner the improvements referred to in the counter-affidavit and in the present judgment. (Para 24).

Referred: Shaw vs Director, Public Prosecution [(1961) 2 All E.R. 447]; Murlidhar Aggarwal vs State of U.P. [(1974) 2 S.C.C. 472].

Ranganath Misra, J.— The petitioner in this petition under Article 32 of the Constitution is a resident of Sultanbattery area in the State of Kerala and describing himself as a commuter of the Indian Railways he has alleged violation of fundamental rights guaranteed under Articles 19 and 21 and claims reliefs of mandamus to the Union of India for implementing the reports of the Kunzru, Wanchoo and Sikri Committees, appointing a fact finding Commission to inquire and report about the numerous train

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Judgment dated October 28, 1983 in W.P. No. 8911 of 1981. [1983(2) SCALE 686] accidents from 1970 onwards and for several other directions to the Union Government and the instrumentalities connected with the administration of the Railways. As the petition which the petitioner, an allopathic doctor by profession, had himself drafted and filed was unduly long and repetitive, written submission with the assistance of counsel crystalising the issues for determination by the Court was filed, leave to amend the writ petition was granted and notice thereon was issued on August 2, 1982. The petitioner alleged, *inter alia*, that the Railways in this country are owned by the Central Government and on account of failure to fulfil the constitutional, statutory and commercial obligations by the Railways, adequate safety protection to the passengers and their properties is not available. The Indian Railways Act, 1890 ('Act' for short) has prescribed several safety measures; based upon experience, the Railway Board through which apex body the administration is run and controlled has also prescribed rules and issued instructions which are not being properly implemented. The Union Government had appointed three high powered Committees in the post-independence period, namely, the Kunzru, Wanchoo and Sikri Committees to investigate into the affairs of the Railways with particular reference to accidents and though detailed and useful recommendations have been made by these Committees, there has been no adequate implementation thereof. Particular reference has been made to the unmanned level crossings, increasing human error as a contributing factor to accidents, non-allocation of adequate funds for improvements, improper utilisation of the assets and facilities, inefficiency in the administration at different levels, prevalence and increase of indiscipline, frequency of thefts, robberies and murders of passengers, ineffective checking and supervisory system, want of replacement of equipment and repairs to bridges as also non-provision of adequate facilities to passengers.

2. The Joint Director (Safety) has filed a counter affidavit in answer to the Rule on behalf of the respondents. It has been averred that the recommendations of the Accidents Enquiry Committees were examined and implemented within the limits of financial and material resources. So far as manned level crossings are concerned there were as many as 14471 of them as on March 1, 1982 ; unmanned level crossings were provided mostly on roads where the volume of road and train traffic was low. It has been further pleaded that periodic review is undertaken about manning of unmanned level crossings and opening of new level crossings in consultation with appropriate State Governments. Initially it used to be the obligation of the respective State Governments to provide for such level crossings at their cost in view of the accepted position that at a level crossing the right of way is of the train in preference to the traffic on the road. As that arrangement was not working well, with effect from April 1, 1966, a Railway Safety Works Fund has been set up and expenses are being met out of it. From 1978 potentially hazardous unmanned level crossings with a volume of traffic of more than 6000 train vehicle units or poor approach visibility are being manned in a phased manner at the cost of the Railways and control at the gate is also being improved. As on June 1, 1982, there were as many as 27233 unmanned level crossings on the Railways and if all of them are to be manned, a capital expenditure of 330 crore rupees would be necessary and similarly an annual recurring expenditure of Rs. 44 crores will have to be met. As a measure of safety, whistle boards have been fixed near unmanned level crossings requiring the engine driver to whistle while approaching such level crossings. Most of the State have framed rules under the Motor Vehicles Act, 1939, making it obligatory for drivers of motor vehicles to stop short of unmanned level crossings, observe and then proceed. Speed breakers are usually provided on the road approaches to all unmanned level crossings. With a view to educating the users of the roads wide publicity is given through newspapers, cinema slides, commercial broadcasting and the television about the hazards involved while negotiating unmanned level crossings. It has been alleged that unmanned level crossings are gradually being replaced by manned ones and improved technical gadgets are being provided for efficient operation. Relying on the Sikri Committee Report of 1978, it has been submitted that the State Governments appeared to be aware of their responsibilities in this matter and about 2/3 of the funds of the Safety Works had been utilised by March 31, 1982. While admitting that in the initial period utilisation of funds was poor and finalisation of schemes for overbridges and underbridges was slow, the situation is claimed to have improved and in 1982-83 as many as 15 works in different States involving an expenditure of Rs. 22 crores have been cleared.

3. Dealing with manpower, the counter affidavit asserts that direct recruits are given proper training required for the respective posts and only qualified people are entrusted with assignments. Pragmatic and scientific classification of various posts has been made and suitable care is being taken in this regard. So far as the locomotive drivers are concerned, strict vision standards have been laid down and general physical fitness is a prescribed pre-requisite. Drivers are subjected to periodical medical examination until the age of 45 at intervals of three years and thereafter until superannuation every year.

4. Every accident, it has been averred, is thoroughly enquired into to fix the responsibility for it and to visit the delinquent with proper punishment. Ordinarily such enquiries are conducted by the administrative machinery. Accidents involving loss of human life and properties estimated over one lakh are earmarked for enquiry by Commissioners of Railway Safety who as authorities appointed under s. 4 of the Act function independently of the Railway Administration and are under the administrative control of the Ministry of Civil Aviation. Enquiries by the Railway officials are stipulated to commence within three days of the accident and are intended to be over within one week of their commencement, while enquiries by Commissioners of Railway Safety are also required to start within three days and official reports are required to be made within 60 days of the accident. Adequate disciplinary control is exercised and on the findings of the enquiries, the delinquent officials are visited with necessary punishment.

5. Adverting to robberies and dacoities in the running trains, it has been pointed out that they are problems of law and order, maintenance of which is an obligation of the State Governments. Government Railway Police, Civil Police and plain clothed CID officers operate for the purpose of reducing crime and for detection. A moiety share of the cost of GRP is borne by the Railway administration. Added to this Railway Protection Force is maintained to protect consignments booked for transport as also Railway property. The overall strength of the GRP stands at 6,740. They escort passenger trains running at night by deploying armed guards, provide beat patrolling at stations and waiting halls, keep surveillance over criminals and post pickets at vulnerable points.

6. With reference to improvements in the rolling stock and required gadgets, it has been stated that the Sixth Plan for the Railways has been termed as 'Rehabilitation Plan'.

Overaged gadgets are intended to be withdrawn subject to availability of resources and manufacturing capacity within the country. The Planning Commission which is an expert body is responsible for fixing of the priorities. It has again been pleaded that there are nearly 120000 bridges on the Railways out of which 195 are important bridges and nearly 9400 are major bridges. It is said that every bridge is annually inspected and continuous record is maintained in regard to every bridge in the bridge register. On an average 400 to 600 bridges are annually built. Speed restriction is imposed on old and weak bridges and at present there are 202 such bridges. Figures of six years between 1977 and 1983 of the outlay on bridges have been provided which indicate substantial sums having been set apart for the rebuilding of bridges. It is said that the total life of 80 years for steel work and 100 years for masonry part of the bridges stipulated in the Railway Code is for the purpose of provision in the Depreciation Reserve Fund. The codal life does not have any direct relevance with the condition of a bridge and there is no necessity of rebuilding a bridge when its codal life is over. There has been no instance where the work of bridge rebuilding has been postponed for lack of funds and no accident has occurred owing to structural failure of any bridge or girders.

7. Colour light signalling which is an improved device less dependent on direct visibility and where signal is pre-warned by a signal in the rear, is being provided on the trunk and main routes on a graduated scale. Automatic warning system has been introduced in Gaya, Mughalsarai and Howrah-Burdwan chord line sections on the Eastern Railway. Due to theft of aluminium track magnets the system has been found not very satisfactory. Experiments are being made for evolving a design which would not be prone to theft.

8. The petitioner has filed a rejoinder pointing out that the counter affidavit clearly indicated a negative approach on the part of the respondents to the entire matter. According to the petitioner assistance of 500 crores of rupees was to come during the year ending March 31, 1983 and from out of such funds, pressing improvements like manning the unmanned level crossings could be undertaken. Reliance has been placed on the observations of Sikri Committee that accidents at unmanned level crossings take a heavy toll of human lives every year. The petitioner has pleaded for abolition of overtime employment of safety category staff. He has pointed out that though he asked for directions for providing appropriate monitoring of speed of trains particularly at accident prone spots in the track, no reply has been given thereto in the counter-affidavit. The strength of the GRP has been said to be totally inadequate keeping in view the size of the Railways and volume of the passenger traffic it handles. The petitioner has denied the assertion in the counter-affidavit that no accident has taken place on account for defective bridges and has pointed out that the accident of June 6, 1981 on a river bridge in the Bihar State was attributable to this factor only. The petitioner has pleaded again for the introduction of the automatic warning system and has referred to a publication of the Directorate of Safety, Railway Board, entitled, "A Review of Accidents on Indian Railways 1979-80", where the introduction of automatic warning system has been suggested to be introduced to avoid accidents. He has also pleaded for enhancing the minimum compensation in the event of loss of life of a passenger arising out of accidents to a sum of Rs. 75,000/- by appropriate amendment of s. 82-A(2) of the Act. The petitioner has found fault with the counter-affidavit for being silent in regard to his plea for the appointment of Railway Inspectors to make periodical inspection of carriages, engines, tracks, etc.

9. The list before us is not of the ordinary type where there are two contending parties, a claim is raised by one and denied by the other, issues are struck, evidence is led and the findings follow. Though the petitioner is a commuter of trains run by the Indian Railways, the writ petition is essentially in the nature of public interest litigation and the petitioner has attempted to voice the grievances of the community availing the services of the Indian Railways. In view of the recent pronouncements of this Court no objection has been raised in the counter-affidavit and we have not been called upon to adjudge the *locus standi* of the petitioner to maintain an action like this.

10. Railways came to India in 1853 and the first track to be laid was of a small length connecting the then city of Bombay with a suburb. Through the decades that followed the expansion was usually for considerations of trade and commerce, troop movement and administrative convenience. More of expansion came gradually connecting almost the entire country through a well woven network of Railways and by the time the country became independent most of the Railways had been nationalised and Railways constituted the most important commercial activity of the Government of India. As early as 1850-and three years before the opening of the first Railway track, Lord Dalhousie, the then Governor General of India had said in his minutes :

> "I trust they (the East India Company and the Government of India) will ever avoid the error of viewing Railways as private undertaking and will regard them as national works, over which the Government may justly exercise and is called upon to exercise stringent and salutary control. This control should not be an arbitrary right of interference but a regulated authority defined and declared by law which is not to be needlessly or vexatiously exacted but, which, in my humble judgment, is necessary at once for the interests of the State and for the protection of the public."

(Minutes of Lord Dalhousie, July 4, 1850).

11. This regard for the public interest during the pre-independence period was often subjected to the limitations imposed by the British Capital and Management and by British Commercial and economic interests until the Railways were nationalised between 1925 and 1944. At any rate, by 1947 when the foreign domination ended, the Railways had emerged as the main viable and stable means of transport and were providing the lifeline and link throughout the length and breadth of the country. By 1955 the total length of all Indian Railways was 34705 miles and the capital sunk was more than 900 crore rupees.

12. The rise in the importance of the Railways in the national sphere has been gradual. With the expansion of the Railways a high powered body known as the Railway Board has come to be placed at the apex of control and with the new set up following independence a Minister remained incharge to administer the affairs of the Railways through the Board. As early as 1924 by a resolution known as the Convention Resolution of the Legislative Assembly the Railway budget had been separated from the general budget and this historical practice has been continued till today.

13. Today the Railways provided the most effective means of transport both for passengers as also for the goods traffic. The Railways have a great impact in holding this great country together and in promoting and running its economy. Their contribution to the community is manifold-some seen and others not apparently visible. Briefly stated, it is a big force, the largest employer in the country and a monopoly transport agency.

14. Before we come to deal with the specific aspects raised in the writ petition and countered by the respondents certain general observations need be made. The Indian Railways are a socialised public utility undertaking. There is at present a general agreement among writers of repute that the price policy of such a Public Corporation should neither make a loss nor a profit after meeting all capital charges and this is expressed by *covering all costs or breaking even;* and secondly, the price it charges for the services should correspond to relative costs. Keeping the history of the growth of the Railways and their functioning in view, the commendable view to accept may be that the rates and fares should cover the total cost of service which would be equal to operational expenses, interest on investment, depreciation and payment of public obligations, if any. We need not, however, express any opinion about it.

15. After independence, keeping to the ideologies that had been nurtured during the period of struggle an attempt has been made for the simplification of the classes in the Railways. Instead of first class, second class, inter class and third class, two classes only have been maintained, namely, the first class and the second class besides the air-conditioned class. In developed countries usually the classification is higher and lower; leeping or sitting and the like. In India 90% of the earnings in respect of passenger traffic come from the lower class commuters.

16. Also after independence expansion projects have been undertaken and many areas which have hitherto remained unlinked and nconnected have been joined up as part of he notional lifeline. Pandit Jawahar Lal ehru, first Prime Minister of India had once aid :

> "Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organised on a planned basis for the raising of mankind to higher material and cultural level .... Every thing that comes in the way will have to be removed; gently if possible, forcibly, if necessary. And there seems to be little doubt that coercion will often be necessary."

17. This approach on principle does not appear to have been abandoned. It is proper that this is worked out also in the Railways and, as quickly as possible, classification conforming to this is introduced. It is manifest that the Indian Constitution has definitely rejected the authoritarian form of Government and directed the State to bring about an egalitarian social order through the rule of law. In keeping with this mandate several guiding policies are being indicated but implementation is not being made. What Tolstoy remarked can relevantly be quoted as apt :

> "The abolition of slavery has gone on for a very long time. Rome abolished slavery; America abolished it and we did, but only the words were abolished, not the thing."

18. The implementing machinery has become non-functional. This is so not only in our country. Wilfred Jenks in his address in April 1972 to the International Law Organisation had summed up the position thus :.

> "Throughout the world there is an acute crisis of confidence in integrity and fairness. This crisis of confidence lies at the heart of political instability, economic disorder,industrial disturbance, racial and religious conflict, cultural anarchy, youth unrest and continuous international tension. Disruptive in all these fields, it paralyses action to remove its causes."

Burger, C.J. of the United States has said :

> "We are approaching the status of an imperfect society where capability of

> maintaining elementary security in the streets, in the schools and for the homes of our people is in doubt. At every stage of the criminal process, the system cries out for change."

19. What has been extracted above appropriately summarises the current situation all the world over. No purpose is served by placing the blame at the doors of the Government of the day. We must have realism and candour. Independence has been secured at great cost and sacrifice. It is our obligation to maintain it and create an environment in which its fruits can be harvested and shared.

20. Freedom brings responsibility. There can be no rights without responsibilities. In our country, unfortunately individual rights seem to have received disproportionate emphasis without proper stress on corresponding social obligations and responsibilities. In a welfare State like ours the citizen is for ever encountering public officials at various levels, regulators and dispensers of social services and managers of State operated enterprises. It is of the utmost importance that the encounters are as just and as free from arbitrariness as are the familiar encounters of the rights.

Edmund Burke spoke thus :

> "All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and they are to account for their conduct, in that trust to the one great master, author and founder of society."

Equally apt are the observations of Lord Denning in his address to the National Conference of the Law Society in 1980 :

> "When you look upon these scientific achievements, then look back for a moment on our world today, what do you see, Crime, increasing everywhere; sins, disgraceful sins, corroding corruption, increasing everywhere. When we see this, surely we recall the words of 2000 years ago-`what doth it profit a man if he gains the whole world and loses his own soul!'."

What is, therefore, of paramount importance is that every citizen must get involved in the determined march to resurrect the society and subordinate his will and passion to the primordial necessity of order in social life.

Abraham Lincoln once told his Congress :

> "This country, with its institutions, belongs to the people who inhabit it."

Such also is the position in our country. Everyone in the country must realise this and be told the great truth said by Lord Wright :

> "The safeguard of British liberty is in the good sense of the people."
>
> Liversidge v Anderson
> (1942) A.C. 206.

It is useful to conclude our general observations by quoting from Robert Ingersoll :

> "A Government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities and all the nations that have passed away-all are a warning that no nation founded upon injustice can stand. From the sand enshrouded Egypt, from the marble wilderness of Athens, and from every fallen crumbling stone of the once mighty Rome, comes a wail-as it were-the cry that no nation founded on injustice can permanently stand."

21. Having thus cleared the way by indicating the approach, ordinarily the powers of the Court to deal with a matter such as this which *prima facie* appears to be wholly within the domain of the Executive, should have been examined. Lord Simond in *Shaw v Director, Public Prosecution,* (1961)2 All E.R. 447. has observed :

> "I entertain no doubt about there remains in the Courts of Law a residual power to

> enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order, but also the moral welfare of the State and that it is their duty to guard against attacks which may be more insiduous because they are novel and unprepared for."

Mathew, J. in *Murlidhar Aggarwal v State of U.P.*, (1974) 2 S.C.C. 472 at 482. indicated :

> "Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time.
>
> If it is variable, if it depends on the welfare of the community at any given time, how are the courts to ascertain it! The Judges are more to be trusted as interpreters of the law than as expounders of public policy. However, there is no alternative under our system but to vest this power with Judges. The difficulty of discovering what public policy is at any given moment certainly does not absolve the Judges from the duty of doing so. In conducting an enquiry, as already stated, Judges are not hide-bound by precedent. The Judges must look beyond the narrow field of past precedents, thought this still leaves open the question in which direction they must cast their gaze."

The learned Judge then quoted with approval the famous statement of Cardozo (The Nature of Judicial Process):

> "No doubt, there is no assurance that Judges will interpret the mores of their day more wisely and truly than other men. But this is beside the point. The point is rather that this power must be lodged somewhere and under our Constitution and laws, it has been lodged in the Judges and if they have to fulfil their function as Judges, it would hardly be lodged elsewhere."

22. The petitioner has grounded his petition on Articles 19 and 21 of the Constitution. Article 19, inter alia, guarantees freedom of movement throughout the territory of India and to practice any profession, to carry on any occupation, trade or business, and Article 21 guarantees that no person shall be deprived of his life and personal liberty except according to procedure prescribed by law. The petitioner has maintained that he, nay every citizen of this country for the matter of that, is entitled to demand that the State shall provided adequate facilities and create and maintain an environment in which the right to move freely and carry on any business or profession would both be practiceable and feasible. Since the State maintains the Railways which provide the link and make working out of both these rights possible, it is contended, such facilities should be in good shape, adequate, prompt, efficient, economic and within the reach of the common man, free from danger or apprehension of life. Similarly, this service must operate efficiently for transport of goods to facilitate business and practice of profession and trade by citizens. There is hardly any scope to doubt that the guarantees provided in Part III of the Constitution are fundamental and it is the paramount obligation of the State to ensure availability of situations, circumstances and environments in which every citizen can effectively exercise and enjoy those rights. The right to life has recently been held by this Court to connot not merely animal existence but to have a much wider meaning-to include the finer graces of human civilization. If these rights of the citizens are to be ensured, it is undoubtedly the obligation of the Union of India and its instrumentalities to improve the established means of communication in this country. Here again, however, we need not express any opinion as we do not propose to give any directions to the opposite parties.

No dispute regarding maintainability having been raised, that question also did not arise for consideration.

23. We have said earlier that the Railways are a public utility service run on monopoly basis. Since it is a public utility, there is justification to run it merely as a commercial venture with a view to making profits. We do not know-at any rate it does not fall for consideration here-if a monopoly based public utility should ever be a commercial venture geared to support the general revenue of the State but there is not an iota of hesitation in us to say that the common man's mode of transport closely connected with the free play of his fundamental right should not be. We agreed that the Union Government should be free to collect the entire operational cost which would include the interest on the capital outlay of the national exchequer. Small marginal profits cannot be ruled out. The massive operation will require a margin of adjustment and, therefore, marginal profits should be admissible.

24. It is of paramount importance that the services should be prompt, efficient and dignified. The quality of the service should improve. Travel comforts should be ensured. Facilities in running trains should be ensured. Quality of accommodation and availability thereof should be ensured. The administration should remain always alive to the position that every *bona fide* passenger is a guest of the service. Ticketless travelling has to be totally wiped out. We are of the view that it is this class of passengers which is a menace to the system. without any payment these law breakers disturb the administration and genuine passengers. Stringent laws should be made and strictly enforced to free the Railways from this deep rooted evil. Security both to the travelling public as also to the non-travelling citizens must be provided and this means that accidents have to be avoided, attack on the persons of the passengers and prying on their property has to stop. Scientific improvements made in other countries and suitable to the system in our country must be briskly adopted. The obligations cast by the Railways Act and the Rules under it must be complied with. It is relevant to point out here that in the counter-affidavit the respondents have denied some of the assertions of the petitioner, yet no dispute has been generally raised to the stand taken in the writ petition. We are alive to the fact that Government have limitations, both of resources and capacity, yet we hope that the Government and the Administration would rise to the necessity of the occasion and take it as a challenge to improve this great public utility in an effective way and with an adequate sense of urgency. If necessary, it shall set up a high powered body to quickly handle the many faced problems standing in the way. Giving directions in a matter like this where availability of resources has a material bearing, policy regarding priorities is involved, expertise is very much in issue, is not prudent and we do not, therefore, propose to issue directions. We, however, do hope and believe that early steps shall be taken to implement in a phased manner the improvements referred to in the counter-affidavit and in our decision.

25. We think it proper to conclude our decision by remembering the famous saying of Henry Peter Broughan with certain adaptations :

> "It was the boast of Augustus that he found Rome of bricks and left it of marble. But how noble will be the baost of the citizens of free India of today when they shall have it to say that they found law dear and left it cheaper; found it a sealed book and left it a living letter; found it the patrimony of the rich and left it the inheritance of the poor; found it the two edged sword of craft and oppression and left it the staff of honesty

and the shield of innocence."

It is only in a country of that order that the common man will have his voice heard.

26. The dream can become a reality if every citizen becomes aware of his duty and before asking for enforcement of his right, volunteers to perform his obligation.

27. And before we part, we must record our appreciation of the performance of the petitioner. He has taken great pains to highlight his stand-collected a lot of relevant material and argued his case quite well-a doctor by profession though. As this was a public interest litigation, we direct that he shall be entitled to consolidated costs of Rs. 5,000/- recoverable from the Railway Ministry of the Union Government unless paid within two months hence.

SCALE (PIL) 1981-97
BANDHUA MUKTI MORCHA 1769
Petitioner
VS
UNION OF INDIA & ORS.
Respondents

CORAM: P.N. BHAGWATI, R.S. PATHAK AND AMARENDRA NATH SEN, JJ.

PUBLIC INTEREST LITIGATION — BONDED LABOUR — CONSTITUTION — ARTICLE 23 — Directions given.

Referred: ***People's Union for Democratic Rights and others vs Union of India & Others [1983(1) SCR 456 = 1982(1) SCALE 817 & 818]; S.P. Gupta vs President of India [1982(2) SCR 365 = 1981(4) SCALE 1974A]; United Australia Limited vs Barclays Bank Ltd. [(1941) AC 1]; S.P. Gupta vs Union of India [(1982) 2 S.C.R. 365 = 1981(4) SCALE 1974]; Marbury vs Madison [5 U.S. (1 Cranch) 137 (1803).]***

Bhagwati, J.—The petitioner is an rganisation dedicated to the cause of release f bonded labourers in the country. The ystem of bonded labour has been prevalent n various parts of the country since long prior o the attainment of political freedom and it onstitutes an ugly and shameful feature of ur national life. This system based on xploitation by a few socially and economically owerful persons trading on the miser and ffering of large numbers of men and holding em in bondage is a relic of a feudal erarchical society which hypocritically oclaims the divinity of man but treats large asses of people belonging to the lower rungs the social ladder or economically povished segments of society as dirt and chattel. This system under which one person can be bonded to provide labour to another for years and years untill an alleged debt is supposed to be wiped out which never seems to happen during the life time of the bonded labourer, is totally incompatible with the new egalitarian socio-economic order which we have promised to build and it is not only an affront to basic human dignity but also constitutes gross and revolting violation of constitutional values. The appalling conditions in which bonded labourers live, not as humans but as serfs, recall to the mind the following lines from "Man with the Hoe" which almost seem to have been written with reference to this neglected and forlorn species of Indian humanity:

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gment dated December, 16, 1983 in W.P. No. 2135 of 1982. [1983(2) SCALE 1151]

> "Bowed by the weight of centuries he leans
> Upon his hoe and gazes on the ground
> The emptiness of ages on his face,
> And on his back the burden of the world"

They are non-beings, exiles of civilization, living a life worst than that of animals, for the animals are at least free to roam about as they like and they can plunder or grab food whenever they are hungry but these out-castes of society are held in bondage, robbed of their freedom and they are consigned to an existence where they have to live either in hovels or under the open sky and be satisfied with whatever little unwholesome food they can manage to get, inadequate though it be to fill their hungry stomachs. Not having any choice, they are driven by poverty and hunger into a life of bondage a dark bottomless pit from which, in a cruel exploitative society, they cannot hope to be rescued.

2. This pernicious practice of bonded labour existed in many States and obviously with the ushering in of independence it could not be allowed to continue to blight the national life any longer and hence, when we framed our Constitution, we enacted Article 23 of the Constitution which prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by any one. The system of bonded labour therefore stood prohibited by Article 23 and there could ~~have~~ been no more solemn and effective prohibition than the one enacted in the Constitution in Article 23. But, it appears that though the Constitution was enacted as far back as 26th January, 1950 and many years passed since then, no serious effort was made to give effect to Article 23 and to stamp out the shocking practice of bonded labour. It was only in 1976 that Parliament enacted the Bonded Labour System (Abolition) Act, 1976 that Parliament enacted the Bonded Labour System (abolition) Act, 1976 providing for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people. But, unfortunately, as subsequent events have shown and that is borne out also by the Report made by the Centre for Rural Development Administration, Indian Institute of Public Administration to the Ministry of Labour Government of India on "Rehabilitation of Bonded Labour in Monghyr District, Bihar", the Report made by the Public Policy and Planning Division of the Indian Institute of Public Administration to the Ministry of Labour, Government of India on "Evaluation Study of Bonded Labour-Rehabilitation Scheme in Tehri-Garhwal, U.P.", the Report of Laxmi Dhar Misra, the Director-General (Labour Welfare) of the Government of India based on On-the Spot Studies Regarding Identification, Release of Bonded Labourers and Rehabilitation of Freed Labourers in Uttar Pradesh, Madhya Pradesh, Andhra Pradesh, Karnataka, Orissa, Bihar, Rajasthan, Tamilnadu and Kerala and the Report of the National Seminar on "Identification and Rehabilitation of Bonded Labour" held from 7th to 9th February, 1983 that the pernicious practice of bonded labour has not yet been totally eradicated from the national scene and that it continues to disfigure the social and economic life of the country at certain places. There are still a number of bonded labourers in various parts of the country and significantly, as pointed out in the Report of the National Seminar on "Identification and Rehabilitation of Bonded Labour" a large number of them belong to Scheduled Castes and Scheduled Tribes account for the next largest number while the few who are not from Scheduled Castes or Scheduled Tribes are generally landless agricultural labourers. It is absolutely essential-we would unhesitatingly declare that it is a constitutional imperative- that the bonded labourers must be identified and released from the shackles of bondage so that they can assimilate themselves in the main stream of civilised human society and realise the dignity, beauty and worth of human existence. The process of identification and release of bonded labourers is a process of discovery and transformation of non-beings into human-beings and what it involves is eloquently described the beautiful lines of Rabindra Nath Tagore in "Kadi and Komal"

> 'Into the mouths of these
> Dumb, pale and meak
> We have to infuse the language of the soul.
> Into the hearts of these
> Weary and worn, dry and forlorn
> We have to minstrel the language of humanity.'

This process of discovery and transformation poses a serious problem since the social and economic milieu in which it has to be accomplished is dominated by elements hostile to it. But this problem has to be solved if we want to emancipate those who are living in bondage and serfdom and make them equal participants in the fruits of freedom and liberty. It is a problem which needs urgent attention of the Government of India and the State Governments and when the Directive Principles of State Policy have obligated the Central and the State Governments to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and the handicapped, it is not right on the part of the concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected. It is not uncommon to find that the administration in some States is not willing to admit the existence of bonded labour, even though it exists in their territory and there is incontrovertible evidence that it does so exist. We fail to see why the administration should feel shy in admitting the existence of bonded labour, because it is not the existence of bonded labour that is a slur on the administration but its failure to take note of it and to take all necessary steps for the purpose of putting an end to the bonded labour system by quickly identifying, releasing and permanently rehabilitating bonded labourers. What is needed is determination, dynamism and a sense of social commitment on the part of the administration to free bonded labourers and rehabilitate them and wipe out this ugly inhuman practice which is a blot on our national life. What happened recently in the Ranga Reddy District of Andhra Pradesh as a result of the initiative taken by this Court in Writ Petitions Nos. 1574 of 1982 and 54 of 1983 shows clearly that if the political and administrative apparatus has a sense of commitment to the constitutional values and is determined to take action for identifying, releasing and rehabilitating bonded labourers despite pressures and pulls from different quarters much can be done for securing emancipation and rehabilitation of bonded labourers. The District Administration of Ranga Reddy District could in less than six months release over 3000 bonded labourers from the clutches of contractors in stone quarries in Ranga Reddy District and send them back to their homes with tickets and pocket expenses. It is therefore essential that whichever be the State Government it should, where there is bonded labour, admit the existence of such bonded labour and make all possible efforts to eradicate it. By doing so, it will not only be performing a humanitarian function but also discharging a constitutional obligation and strengthening the foundations of participatory democracy in the country.

3. We also find that in some cases the State Governments in order to shirk their obligation, take shelter under the plea that there may be some forced labour in their State but that is not bonded labour. We shall have occasion to deal with this plea a little later when we refer to the definition of 'bonded labour' given in the Bonded Labour System

(Abolition) Act, 1976 which at first blush appears to be a narrow definition limited only to a situation where a debtor is forced to provide labour to a creditor. The State of Haryana has in the present case tried to quibble with this definition of 'bonded labour' and its argument has been that these labourers may be providing forced labour but they are not bonded labourers within the meaning of the Bonded Labour System (Abolition) Act, 1976 and they may therefore be freed by the Court if it so pleases but the State of Haryana cannot be compelled to rehabilitate them. We are constrained to observe that this argument, quite apart from its invalidity, ill-behoves a State Government which is committed to the cause of socialism and claims to be striving to ensure social justice to the vulnerable sections of the community. But we do not wish to anticipate the discussion in regard to this argument and at the present stage we content ourselves by merely observing that it is unfortunate that any State Government should take up the plea that persons who are forced to provide labour may be forced labourers but unless it is shown by them by proper evidence tested by cross-examination that they are forced to provide labour against a bonded debt, they cannot be said to be bonded labourers and the State Government cannot be held to be under any obligation to rehabilitate them.

4. The petitioner made a survey of some of the stone quarries in Faridabad district near the city of Delhi and found that there were a large number of labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan who were working in these stone quarries under "inhuman and intolerable conditions" and many of whom were bonded labourers. The petitioner therefore addressed a letter to one of us on 25th February, 1982 pointing out that in the mines of Shri S.L. Sharma, Gurukula Indra Prastha, Post Amar Nager, Faridabad District, a large number of labourers were languishing under abject conditions of bondage for last about ten years and the petitioner gave the names of 11 bonded labourers who were from village Asarha, Barmer district of Rajasthan, 7 bonded labourers who were from village Bharol district Jhansi of Madhya Pradesh and 23 bonded labourers who were from village Barodia, Bhanger, Tehsil Khurai, district Sagar, M.P. The Petitioner pointed out that there were "yet another 14 bonded labourers from Lalitpur in U.P." The petitioner also annexed to its letter, statements in original bearing the thumb marks or signatures as the case may be of these bonded labourers referred to in the letter. The petitioner pointed out in the letter that the labourers working in these stone quarries were living under the most inhuman conditions and their pitiable lot was described by the petitioner in the following words:

> "Besides these cases of bonded labour, there are innumerable cases of fatal and serious injuries caused due to accidents while working in the mines, while dynamiting the rocks or while crushing the stones. The stone-dust pollution near the stone crushers is so various that many a valuable lives are lost due to tubroculosis while others are reduced to mere skeletons because of T.B. and other diseases. The workers are not provided with any medical care, what to speak of compensating the poor worker for injury or for death. No cases are registered against the mine owners or the lessees for violation of safety rules under Mines Act. We are enclosing herewith the statements of about 75 workers who have suffered or are suffering continuously due to non-implementation of the rules by the Central Government or by Haryana Government or by the employers.
>
> Almost 99% of the workers are migrant

> from drought prone areas of Rajasthan, Madhya Pradesh, Andhra Pradesh, Orissa, Maharashtra and Bihar. But if there is any one place where the Central legislation of Inter State Migrant Workmen Act 1979 is being most flagrantly violated it is here in these mines, without any residential accommodation, with the name-not even a thatched roof to fend against the icy winds and winter rain or against the scorching heat in midsummer, with scanty clothing, with very impure and polluted drinking water accumulated during rainy season in the clitches, with absolutely no facilities for schooling or childcare, breving all the hazards of nature and pollution and ill treatment, these thousands of sons and daughters of Mother India epitomise the "Wretched of the Earth".
>
> On top of all these forms of exploitation is the totally illegal system of "Thekedars", middlemen who extract 30% of the poor miner's wages as their ill gotten commission (Rs. 20 out of Rs. 60/-, wages for per truck load of stone ballast). The trucks are invariably oversigned in some cases they doubt the prescribed size of 150 Sq. feet but payment remains the same. The hills are dotted with liquor vends-legal and illegal. Murder and molestation of women is very common."

The petitioner also set out the various provisions of the Constitution and the statutes which were not being implemented or observed in regard to the labourers working in these stone quarries. The petitioner in the end prayed that a writ be issued for proper implemention of these provisions of the Constitution and statutes with a view to ending the misery, suffering and helplessness of "these victims of most inhuman exploitation".

5. The letter dated 25th February 1982 addressed by the petitioner was treated as a writ petition and by an order dated 26th February 1982 this Court issued notice on the writ petition and appointed two advocates, namely, M/s. Ashok Srivastava and Ashok Panda as commissioners to visit the stone quarries of Shri S.L. Sharma in Godhokhor (Anangpur) and Lakkarpur in Faridabad district and to interview each of the persons whose names were mentioned in the letter of the petitioner as also a cross section of the other workers with a view to finding out whether they are willingly working in these stone quarries and also to inquire about the conditions in which they are working. M/s. Ashok Srivastava and Ashok Panda were directed to visit these stone quarries on 27th and 28th February 1982 and to make a report to this Court on or before 2nd March 1982. Pursuant to this order made by us, M/s. Ashok Srivastava and Ashok Panda visited the stone quarries of S.L. Sharma in Godhokhor and Lakkarpur and carried out the assignment entrusted to them and submitted a report to this Court on 2nd March 1982. The Report pointed out inter alia that in the stone quarries of S.L. Sharma at Godhakhpur, "many stone crushing machines were operating with the result that the whole atmosphere was full of dust and it was difficult even to breathe". The report then referred to the statements of various workers interviewed by M/s. Ashok Srivastava and Ashok Panda and according to the statements given by some of them, namely, Lalu Ram, Dalla Ram, Thakur Lal, Budh Ram, Harda, Mahadev, Smt. Shibban, Hardev, Anam, Punnu, Ghanshyam, Randhir and Munte, they were not allowed to leave the stone quarries and were providing forced labour and they did not have even pure water to drink but were compelled in most cases to drink dirty water from a *nallah* and were living in Jhuggies with stones piled one upon the other as walls and straw covering at the

top, which did not afford any protection against sun and rain and which were so low that a person could hardly stand inside them. The statements of these workers showed that a few of them were suffering from tuberculosis and even when injuries were caused due to accidents arising in the course of employment, no compensation was being paid to them and there were no facilities for medical treatment or schooling for children. The Report proceeded to state that M/s. Ashok Srivastava and Ashok Panda then visited mine no. 8 in Godhokhor stone quarries and here they found that the condition of the jhuggies was much worse inasmuch as the jhuggies were made only of straw and most of the people living in jhuggies had no clothes to wear and were shivering from cold and even the small children were moving about without any proper clothing. M/s. Ashok Srivastava and Ashok Panda found that none of the inmates of the jhuggies had any blanket or woollen clothes and they did not even have any mat on which they could sleep. The statements of Phool Chand, Babu Lal, Bhoolu, Karaya, Ram Bahadur and Sallu also showed that all these workers were bonded labourers who were not allowed to leave the stone quarries and one of them, namely, Sallu was seriously injured on his left leg only a day before the visit of M/s. Ashok Srivastava and Ashok Panda but he did not hope to get any compensation "because here no one gets any compensation for any injury". Most of the workers interviewed by M/s Ashok Srivastava and Ashok Panda stated that they got very little by way of wages from the mine lessees or owners of stone crushers since they had to purchase explosives with their own moneys and they had to incur other expenses which, according to Dr. Patwardhan's report to which we shall refer hereafter, included 50 per cent of the expenses of drilling holes. M/s. Ashok Srivastava and Ashok Panda also pointed out in the Report that the following persons working in the Godhokhor stone quarries claimed that they were bonded labourers :

> I. Chand Bahadur son of Hastbir (2) Lal Bahadur son of Umber Bahadur (3) Chhotey Lal son of Jarau (4) Harak Bahadur son of Jeet Bahadur (5) Gopal Bahadur son of Jhabu Singh (6) Roop Singh son of Govinda (7) Medh Bahadur son of Asptier (8) Jiddey Bahadur son of Nunbahadur (9) Phool Bahadur son of Ram Bahadur (10) Heera Bahadur son of Balbahadur (11) Veer Bahadur son of Chhalvir (12) Nain Singh son of Lal Bahadur (13) Lal Bahadur son of Gang Bahadur (!4) Ganesh son of Gang Bahadur (15) Amber Bahadur son of Sadhu Bahadur (16) Hira Lal son of Atbahadur (17) Kamar Bahadur (18) Jagadh Bahadur son of Top Bahadur (19) Gajender Bahadur son of Shyam Lal (20) Ganga Ram son of Lal Bahadur (21) Nar Bahadur and (22) Sant Bahadur son of Bhag Bahadur.

So far as the workers working in Lakkarpur stone quarries were concerned, the report of M/s. Ashok Srivastava and Ashok Panda stated that out of about 250 persons living in straw jhuggies, 100 persons hailed from Bilaspur while 150 persons belonged to Allahabad and according to the report, 100 persons coming from Bilaspur stated that they were forcibly kept by the contractor and they were not allowed to move out of their place and they were bonded labourers. M/s. Ashok Srivastava and Ashok Panda described in the Report the pitiable condition in which these workers were living in straw jhuggies without any protection against sun and rain and with drinking water available only from the *barsati nallah*. The Report pointed out that while M/s. Ashok Srivastava and Ashok Panda were interviewing the workers in the Lakkarpur stone quarry, it started raining heavily and thereupon they took shelter in one of the jhuggies "but inside the jhuggi it was not safe, as water was pouring inside" and they were completely drenched inside the jhuggi. The Report also stated that, according to these workers, there were no medical facilities available and even where workers were injured, they did not get any medical aid. The Report ended by observing that these workmen "presented a picture of helplessness, poverty and extreme exploitation at the hands of moneyed people" and they were found "leading a most miserable life and perhaps beasts and animals could be leading more comfortable life than these helpless labourers".

6. Thereafter, the writ petition came up for hearing on 5th March 1982 along with another writ petition filed by the present petitioner for release of some other bonded labourers and on this day the Court made an order directing that the copies of the Report of M/s Ashok Srivastava and Ashok Panda should be supplied to all the mine-lessees and stone crushers who are respondents to the writ petitions so that they may have an opportunity to file their reply to the facts found in the Report. The Court also appointed Dr. Patwardhan of Indian Institute of Technology to carry out a socio-legal investigation in the following terms :

> "it is necessary that a socio-legal investigation should be carried out for the purpose of determining what are the conditions prevailing in the various quarries in Faridabad District and whether there are any workmen in those quarries against their will or without their consent and what are the conditions in which they are living and whether any of the provisions of the Bonded Labour System (Abolition) Act and Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act is being violated. We may make it clear that when we are directing a socio-legal investigation of these matters it is not in a spirit to criticise the State Government or any of its officers but with a view to find out the correctness of the state of affairs so that the State Government and its officers could take necessary steps for remedying the situation if a state of affairs exists which is contrary to the provisions of law and the basic human norms. The Court can take action only after the socio-legal investigation is carried out by some responsible person and a copy of the report of the socio-legal investigation is made available to the parties. We would therefore, request Dr. Patwardhan of I.I.T. to be good enough to carry out a socio legal investigation into the aforesaid matters in the quarries in Faridabad District a list of which will be supplied by Mr. Mukhoty on behalf of the petitioners to Dr. Patwardhan within ten days from today after giving a copy to Mr. K.G. Bhagat, learned Counsel appearing for the State of Haryana. Dr. Patwardhan is requested to carry out socio-legal investigation with a view to putting forwarding a scheme for improving the living conditions for the workers working in the stone quarries and after the scheme is submitted to us we propose to hear the parties on the scheme with a view to evolving a final scheme with the assistance of the State of Haryana for the purpose of economic regeneration of these workmen.

The Court permitted Dr. Patwardhan to take the assistance of any person other than the parties to the writ petition in order to help him in his task and at the suggestion of the Court, the State of Haryana agreed to deposit a sum of Rs. 1500/- to meet the expenses of Dr. Patwardhan in carrying out the socio-legal investigation. The Court also recorded in its order that when it was pointed out in the

Report of M/s. Ashok Srivastava and Ashok Panda that the workers in the stone quarries did not have any pure drinking water but were using dirty water from the nullah for drinking purposes. Mr. K.G. Bhagat learned Additional Solicitor General appearing on behalf of the State of Haryana fairly stated that "though it may not be strictly the obligation of the State Government, the State Government will take necessary measures for providing drinking facilities to the workmen in the stone quarries". The Court also directed that the workmen whose names were set out in the writ petition and in the Report of M/s. Ashok Srivastava and Ashok Panda and particularly in regard to whom a separate statement had been filed in Court on behalf of the petitioner, would be free to go wherever they liked and they should not be restrained from doing so by any one and "if they go to their respective villages, the district magistrates having jurisdiction over those villages" shall "take steps or measures to the extent possible for rehabilitating them."

7. Pursuant to this order made by the Court, the State of Haryana deposited a sum of Rs. 1500/- in Court to meet the expenses of the socio-legal investigation and Dr. Patwardhan embarked upon his task with the assistance of Mr. Krishan Mahajan, the legal correspondent of the Hindustan Times. It took some time for Dr. Patwardhan to complete his assignment and prepare his report but having regard to the immensity of the task, the time within which Dr. Patwardhan finished the inquiry and submitted his report was remarkably short. We shall have occasion to refer to this Report a little latter when we deal with the arguments advanced on behalf of the parties, but we may point out at this stage that the report of Dr. Patwardhan is a comprehensive, well documented socio-legal study of the conditions in which the workmen engaged in stone quarries and stone crushers live and work and it has made various constructive suggestions and recommendations for the purpose of improving the living conditions of these workmen. We are indeed grateful to Dr. Patwardhan for carrying out this massive assignment so efficiently and in such a short time. Dr. Patwardhan has submitted a statement of the expenses incurred by him in carrying out this socio-legal investigation and this statement shows that he has incurred a total expense of Rs. 2078/- which after withdrawal of the amount of Rs. 1500/- deposited by the State of Haryana, leaves a balance of Rs. 578/- to be reimbursed to Dr. Patwardhan. We are of the view that Dr. Patwardhan should also be paid a small honorarium of Rs. 1000/-. We would therefore direct the State of Haryana to deposit a sum of Rs. 1578/- with the Registry of this Court within 4 weeks from today with liberty to Dr. Patwardhan to withdraw the same.

8. Though it was stated by Shri K.G. Bhagat on behalf of the State of Haryana that the State Government will take necessary measures for providing drinking facilities to the workmen in the stone quarries referred to in the writ petition and in the report of M/s. Ashok Srivastava and Ashok Panda, it appears that either no such measures were taken on behalf of the State Government or even if they were taken, they were short lived. The result was that the workmen working in most of these stone quarries had to remain without pure drinking water and they had to continue "to quench their thirst by drinking dirty and filthy water". Whether it is the obligation of the State Government to provide pure drinking water and if so what measures should be directed to be taken by the State Government in that behalf are matters which we shall presently consider. These are matters of some importance because there can be no doubt that pure drinking water is absolutely essential to the health and well-being of the workmen and some authority has to be responsible for providing it.

9. Before we proceed to consider the merits of the controversy between the parties in all its various aspects it will be convenient at this stage to dispose of a few preliminary objections urged on behalf of the respondents. The learned Additional Solicitor General appearing on behalf of the State of Haryana and also Mr. Phadke on behalf of one of the mine lessees contended that even if what is alleged by the petitioner in his letter which has been treated as a writ petition, is true, it cannot support a writ petition under Article 32 of the Constitution, because no fundamental right of the petitioner or of the workmen on whose behalf the writ petition has been filed, can be said to have been infringed. This contention is in our opinion, futile and it is indeed surprising that the State Government should have raised it in answer to the writ petition. We can appreciate the anxiety of the mine lessees to resist the writ petition on any ground available to them, be in it hyper-technical or even frivolous, but we find it incomprehensible that the State Government should urge such a preliminary objection with a view to stifling at the threshhold an inquiry by the Court as to whether workmen are living in bondage and under inhuman conditions. We should have thought that if any citizen brings before the Court a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of social welfare laws, the State Government, which is, under our constitutional scheme, charged with the mission of bringing about a new socio-economic order where there will be social and economic justice for every one and equality of status and opportunity for all, would welcome an inquiry by the court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act 1976 but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation, such a situation can be set right by the State Government. Even if the State Government is on its own inquiry satisfied that the workmen are not bonded and are not compelled to provide forced labour and are living and working in decent conditions with all the basic necessities of life provided to them, the State Government should not baulk an inquiry by the court when a complaint is brought by a citizen, but it should be anxious to satisfy the court and through the court, the people of the country, that it is discharging its constitutional obligation fairly and adequately and the workmen are being ensured social and economic justice. We have on more occasions than one said that public interest litigation is not in the nature of adversary litigation but it is challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation

and injustice and ensure to the weaker sections their rights and entitlements. When the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives.

10. Moreover, when a complaint is made on behalf of workmen that they are held in bondage and are working and living in miserable conditions without any proper or adequate shelter over their heads, without any protection against sun and rain, without two square meals per day and with only dirty water from a nullah to drink, it is difficult to appreciate how such a complaint can be thrown out on the ground that it is not violative of fundamental right of the workmen. It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullen's case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State-neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Article 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State *Shall* be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State. We have already pointed out in *Asiad Construction Workers Case* 1983(1) SCR 456, that the State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy. It must also follow as a necessary corollary that the

State of Haryana in which the stone quarries are vested by reason of Haryana Minerals (Vesting of Rights) Act 1973 and which is therefore the owner of the mines cannot while giving its mines for stone quarrying operations, permit workmen to be denied the benefit of various social welfare and labour laws enacted with a view to enabling them to live a life of human dignity. The State of Haryana must therefore ensure that the mine-lessees or contractors, to whom it is giving its mines for stone quarrying operations, observe various social welfare and labour laws enacted for the benefit of the workmen. This is a constitutional obligation which can be enforced against the Central Government and the State of Haryana by a writ petition under Article 32 of the Constitution.

11. The next preliminary objection urged by the learned Additional Solicitor General on behalf of the State of Haryana and Mr. Phadke on behalf of one of the mine-lessees was that the court had no power to appoint either Mr. Ashok Srivastava and Mr. Ashok Panda or Mr. Patwardhan as commissioners and the Reports made by them had no evidentiary value since what was stated in the Reports was based only on ex-parte statements which had not been tested by cross-examination. The learned Additional Solicitor General as also Mr. Phadke relied on order XLVI of the Supreme Court Rules 1966 which, as its heading shows, deals with commissions and contended that since the commissions issued by the court in the present case did not fall within the terms of any of the provisions of Order XLVI, they were outside the scope of the power of the court and the court was not entitled to place any reliance on their reports for the purpose of adjudicating the issues arising in the writ petition. This argument, plausible though it may seem at first sight, is in our opinion not well founded and must be rejected. It is based upon a total misconception of the true nature of a proceeding under Article 32 of the Constitution. Article 32 is so frequently used by lawyers and judges for enforcement of fundamental rights without any preliminary objection against its invocation being raised on behalf of the State, that we have rarely any occasion to examine its language and consider how large is the width and amplitude of its dimension and range. We are so much accustomed to the concept of Anglo-Saxon jurisprudence which require every legal proceeding including a proceeding for a high prerogative writ to be cast in a rigid or definitive mould and insist on observance of certain well settled rules of procedure, that we implicitly assume that the same sophisticated procedural rules must also govern a proceeding under Article 32 and the Supreme Court cannot permit itself to be freed from the shackles of these rules even if that be necessary for enforcement of a fundamental right. It was on the basis of this impression fostered by long association with the Anglo-Saxon system of administration of justice that for a number of years this court had taken the view that it is only a person whose fundamental right is violated who can approach the Supreme Court for relief under Article 32 or in other words, he must have a cause of action for enforcement of his fundamental right. It was only in the year 1981 in the *Judges Appointment and Transfer Case* 1982(2) SCR 365, that this Court for the first-time took the view that where a person or class of person to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court for judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of the public acting bona fide can move the court for relief under Article 32 and a fortiorari, also under Article 226, so that the fundamental rights may become meaningful not only for the rich and the well-to-do who have the means to approach the court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress. This view which we took in the Judges Appointment and Transfer Case is clearly within the terms of Article 32 if only we look at the language of this Article uninfluenced and uninhibited by any pre-conceptions and prejudices or any pre-conceived notions. Article 32 in so far it is material is in the following terms :

> "Art. 32(1): The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
>
> (2) : The Supreme Court shall have power to issue directions or orders or writs, including writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

While interpreting Article 32, it must be borne in mind that our approach must be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which this Article has been enacted as a Fundamental Right in the Constitution and its interpretation must receive illumination from the trinity of provisions which permeate and energize the entire Constitution namely, the Preamble, the Fundamental Rights and the Directive Principles of State Policy. Clause (1) of Article 32 confers the right to move the Supreme Court for enforcement of any of the fundamental rights, but it does not say as to who shall have this right to move the Supreme Court nor does it say by what proceedings the Supreme Court may be so moved. There is no limitation in the words of Clause (1) of Article 32 that the fundamental right which is sought to be enforced by moving the Supreme Court should be one belonging to the person who moves the Supreme Court nor does it say that the Supreme Court should be moved only by a particular kind of proceeding. It is clear on the plain language of clause (1) of Article 32 that whenever there is a violation of a fundamental right, any one can move the Supreme Court for enforcement of such fundamental right. Of course, the Court would not, in exercise of its discretion intervene at the instance of a meddlesome interloper or busy body and would ordinarily insist that only a person whose fundamental right is violated should be allowed to activise the court, but there is no fetter upon the power of the court to entertain a proceeding initiated by any person other than the one whose fundamental right is violated, though the court would not ordinarily entertain such a proceeding, since the person whose fundamental right is violated can always approach the court and if he does not wish to seek judicial redress by moving the court, why should some one else be allowed to do so on his behalf. This reasoning however breaks down when we have the case of a person or class of persons whose fundamental right is violated but who cannot have resort to the court on account of their poverty or disability or socially or economically disadvantaged position and in such a case, therefore, the court can and must allow any member of the public acting bona fide to espouse the cause of such person or class of persons and move the court for judicial enforcement of the fundamental right of such person or class of persons. This does not violate, in the slightest measure, the language of the constitutional provision enacted in clause (1) of Article 32.

12. Then again clause (1) of Article 32 says that the Supreme Court can be moved for enforcement of a fundamental right by any 'appropriate' proceeding. There is no limitation in regard to the kind of proceeding envisaged in clause (1) of Article 32 except that the proceeding must be "appropriate" and this requirement of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken, namely, enforcement of a fundamental right. The Constitution makers deliberately did not lay down any particular form of proceeding for enforcement of a fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or straight jacket formula as, for example, in England, because they knew that in a country like India where there is so much of poverty, ignorance, illiteracy, deprivation and exploitation, any insistence on a rigid formula of proceeding for enforcement of a fundamental right would become self-defeating because it would place enforcement of fundamental rights beyond the reach of the common man and the entire remedy for enforcement of fundamental rights which the Constitution makers regarded as so precious and invaluable that they elevated it to the status of a fundamental right, would become a mere rope of sand so far as the large masses of the people in this country are concerned. The Constitution makers therefore advisedly provided in clause (1) of Article 32 that the Supreme Court may be moved by any 'appropriate' proceeding, 'appropriate' not in terms of any particular form but 'appropriate' with reference to the purpose of the proceeding. That is the reason why it was held by this Court in the Judges Appointment and Transfer Case (supra) that where a member of the public acting bonafide moves the Court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the court for relief, such member of the public may move the court even by just writing a letter, because it would not be right or fair to expect a person acting pro bono publico to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in court for enforcement of the fundamental right of the poor and deprived sections of the community and in such a case, a letter addressed by him can legitimately be regarded as an "appropriate" proceeding.

13. But the question then arises as to what is the power which may be exercised by the Supreme Court when it is moved by an "appropriate" proceeding for enforcement of a fundamental right. The only provision made by the Constitution makers in this behalf is to be found in clause (2) of Article 32 which confers power on the Supreme Court "to issue direction or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, which-ever may be appropriate, for enforcement of any of the fundamental rights. It will be seen that the power conferred by clause (2) of Article 32 is in the widest terms. It is not confined to issuing the high prerogative writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto, which are hedged in by strict conditions differing from one writ to another and which to quote the words spoken by Lord Atkin in *United Australia Limited v. Barclays Bank Ltd.* (1941) AC 1. (1941) AC 1 in another context often "stand in the path of justice Clanking their mediavel chains". But it is much wider and includes within its matrix, power to issue any directions, orders or writs which may be appropriate for enforcement of the fundamental right in question and this is made amply clear by the inclusive clause which refers to *in the nature* of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is not only the high prerogative writs of mandamus, habeas corpus, prohibition, quo warranto and certiorari which can be issued by the Supreme Court but also writs *in the nature* of these high prerogative writs and therefore even if the conditions for issue of any of these high prerogative writs are not fulfilled, the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative writ. This provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The Constitution makers clearly intended that the Supreme Court should have the amplest power to issue whatever direction, order or writ may be appropriate in a given case for enforcement of a fundamental right. But what procedure shall be followed by the Supreme Court in exercising the power to issue such direction, order or writ ? That is a matter on which the Constitution is silent and advisedly so, because the Constitution makers never intended to fetter the discretion of the Supreme Court to evolve a procedure appropriate in the circumstances of a given case for the purpose of enabling it to exercise its power of enforcing a fundamental right. Neither clause (2) of Article 32 nor any other provision of the Constitution requires that any particular procedure shall be followed by the Supreme Court in exercising its power to issue an appropriate direction, order or writ. The purpose for which the power to issue an appropriate direction, order or writ is conferred on the Supreme Court is to secure enforcement of a fundamental right and obviously therefore, whatever procedure is necessary for fulfilment of that purpose must be permissible to the Supreme Court. It is not at all obligatory that an adversarial procedure, where each party produces his own evidence tested by cross examination by the other side and the judge sits like an umpire and decides the case only on the basis of such material as may be produced before him by both parties, must be followed in a proceeding under Article 32 for enforcement of a fundamental right. In fact, there is no such constitutional compulsion enacted in clause (2) of Article 32 or in any other part of the Constitution. It is only because we have been following the adversarial procedure for over a century owing to the introduction of the Anglo-Saxon system of jurisprudence under the British Rule that it has become a part of our conscious as well as sub-conscious thinking that every judicial proceeding must be cast in the mould of adversarial procedure and that justice cannot be done unless the adversarial procedure is adopted. But it may be noted that there is nothing sacrosanct about the adversarial procedure and in fact it is not followed in many other countries where the civil system of law prevails. The adversarial procedure with evidence led by either party and tested by cross-examination by the other party and the judge playing a passive role has become a part of our legal system because it is embodied in the Code of Civil Procedure and the Indian Evidence Act. But these statutes obviously have no application where a new jurisdiction is created in the Supreme Court for enforcement of a fundamental right. We do not think we would be justified in imposing any restriction on the power of the Supreme Court to adopt such procedure as it thinks fit in exercise of its new jurisdiction, by engrafting adversarial procedure on it, when the Constitution makers have deliberately chosen not to insist on any such requirement and instead, left it open to the Supreme Court to follow such procedure as it thinks appropriate for the purpose of securing the end for which the power is conferred, namely, enforcement of a fundamental right. The adversarial procedure has, in fact, come in for a lot of criticism even in the country of its origin, and there is an increasing tendency even in that country to depart from its strict norms. Lord De lin speaking of the English judicial system said : "If our methods were as antiquated as our legal methods, we should be a bankrupt country". And Foster Q.C. observed : "I think the whole English system is non-sense. I would go to the root of it-the civil case between two private parties is a mimic battle...conducted according to rules of evidence." There is a considerable body of juristic opinion in our country also which believes that strict adherence to the adversarial procedure can some times lead to injustice, particularly where the parties are not evenly balanced in social or economic strength. Where one of the parties to a litigation belongs to a poor and deprived section of the community and does not possess adequate social and material resources, he is bound to be at a disadvantaged as against a strong and powerful opponent under the adversary system of justice, because of his difficulty in getting competent legal representation and more than anything else, his inability to produce relevant evidence before the court. Therefore, when the poor come before the court, particularly for enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and weak to bring the necessary material before the court for the purpose of securing enforcement of their fundamental rights. It must be remembered that the problems of the poor which are now coming before the court are qualitatively different from those which have hitherto occupied the attention of the court and they need a different kind of lawyering skill and a different kind of judicial approach. If we blindly follow the adversarial procedure in their case, they would never be able to enforce their fundamental rights and the result would be nothing but a mockery of the Constitution. We have therefore to abandon the *laissez faire* approach in the judicial process particularly where it involves a question of enforcement of fundamental rights and forge new tools, devise new methods and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of people. And this is clearly permissible on the language of clause (2) of Article 32 because the Constitution makers while enacting that clause have deliberately and advisedly not used any words restricting the power of the court to adopt any procedure which it considers appropriate in the circumstances of a given case for enforcing a fundamental right. It is true that the adoption of this non-traditional approach is not likely to find easy acceptance from the generality of lawyers because their minds are conditioned by constant association with the existing system of administration of justice which has become ingrained in them as a result of long years of familiarity and experience and become part of their mental make up and habit and they would therefore always have an unconscious predilection for the prevailing system of administration of justice. But if we want the fundamental rights to become a living realty and the Supreme Court to become a real sentinel on the qui vive, we must free ourselves from the shackles of outdated and outmoded assumptions and bring to bear on the subject fresh outlook and original unconventional thinking.

14. Now it is obvious that the poor and the disadvantaged cannot possibly produce relevant material before the court in support of their case and equally where an action is brought on their behalf by a citizen acting pro bono publico, it would be almost impossible for him to gather the relevant material and place it before the court. What is the Supreme Court to do in such a case? Would the

Supreme Court not be failing in discharge of its constitutional duty of enforcing a fundamental right if it refuses to intervene because the petitioner belonging to the underprivileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the court. If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking its intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned. It is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society. The Report of the commissioner would furnish prima facie evidence of the facts and data gathered by the commissioner and that is why the Supreme Court is careful to appoint a responsible person as commissioner to make a inquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a district magistrate, sometimes a district Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the court and sometimes an advocate practising in the court, for the purpose of carrying out an inquiry or investigation and making report to the court because the commissioner appointed by the Court must be a responsible person who enjoys the confidence of the court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the commissioner is received, copies of it would be supplied to the parties so that either party, if it wants to dispute any of the facts or data stated in the Report, may do so by filing an affidavit and the court then consider the report of the commissioner and the affidavits which may have been filed and proceed to adjudiciate upon the issue arising in the writ petition. It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the commissioner and to what extent to act upon such facts and data. But it would not be correct to say that the report of the commissioner has no evidentiary value at all, since the statements made in it are not tested by cross-examination. To accept this contention would be to introduce the adversarial procedure in a proceeding where in the given situation, it is totally inapposite. The learned Additional Solicitor General and Mr. Phadke relied on Order XXVI of the Code of Civil Procedure and Order XLVI of the Supreme Court Rules 1966 for the purpose of contending that a commission can be appointed by the Supreme Court only for the purpose of examining witnesses, making legal investigations and examining accounts and the Supreme Court has no power to appoint a commission for making an inquiry or investigation into facts relating to a complaint of violation of a fundamental right in a proceeding under Article 32. Now it is true that Order XLVI of the Supreme Court Rules 1966 makes the provisions of Order XXVI of the Code of Civil Procedure, except rules 13, 14, 19, 20, 21 and 22 applicable to the Supreme Court and lays down the procedure for an application for issue of a commission, but Order XXVI is not exhaustive and does not detract from the inherent power of the Supreme Court to appoint a commission, if the appointment of such commission is found necessary for the purpose of securing enforcement of a fundamental right in exercise of its constitutional jurisdiction under Article 32. Order XLVI of the Supreme Court Rules 1966 cannot in any way militate against the power of the Supreme Court under Article 32 and in fact rule 6 of Order XLVII of the Supreme Court Rules 1966 provides that nothing in those Rules "shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice." We cannot therefore accept the contention of the learned Addl. Solicitor General and Mr. Phadke that the court acted beyond its power in appointing M/s. Ashok Srivastava and Ashok Panda as commissioners in the first instance and Dr. Patwardhan as commissioner at a subsequent stage for the purpose of making an inquiry into the conditions of workmen employed in the stone quarries. The petitioner in the writ petition specifically alleged violation of the fundamental rights of the workmen employed in the stone quarries under Article 21 and 23 and it was therefore necessary for the court to appoint these commissioners for the purpose of inquiring into the facts related to this complaint. The Report of M/s. Ashok Srivastava and Ashok Panda as also the Report of Dr. Patwardhan were clearly documents having evidentiary value and they furnished prima facie evidence of the facts and data stated in those Reports. Of course, as we have stated above, it will be for us to consider what weight we should attach to the facts and data contained in these Reports in the light of the various affidavits filed in the proceedings.

15. We may point out that what we have said above in regard to the exercise of jurisdiction by the Supreme Court under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.

16. Having disposed of these preliminary objections, we shall now proceed to consider the writ petition on merits. But, before we turn to examine the facts of this case, we may first consider which are the laws governing the living and working conditions of workmen employed in the stone quarries. The first statute to which we must refer in this connection is the Mines Act, 1952. This Act extends to the whole of India and therefore applies a *fortiorari* in the State of Haryana. Section 2 (j) defines "mine" to mean "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes in clause (iv) "all open cast working". The word "minerals" has been given a very broad meaning under section 2 (jj) and it means "all substance which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation". Section 2(kk) gives the definition of "open cast working" and according to this definition, it means "a quarry, that is to say, an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground". There can be no doubt that according to these definitions, the stone quarries with which we are concerned in this writ petition constitute "mines" within the meaning of the definition of that term in section 2 (j), since they are excavations where operations for the purpose of searching for or obtaining stone by quarrying are being carried on but they are not `open cast working' since admittedly excavations in the case of these stone quarries extend below superjacent ground. But the question still remains whether the provisions of the Mines Act 1952 apply to these stone quarries even if they are "mines". Section 3(1)(b) enacts that the provisions of the Mines Act, 1952 except those contained in sections 7, 8, 9, 44, 45 and 46 shall not apply to any mine engaged in the extraction *inter alia* of kankar, murrum, laterite, bouldern, gravel, shingle, building stone, road metal and earth and therefore, if this statutory provision stood alone without any qualification, it would appear that barring the excepted sections, the provisions of Mines Act 1952 would not apply to these stone quarries. But there is a proviso to section 3 (1)(b) which is very material and it runs as follows :

> "3(1) the provisions of this Act, except those contained in sections 7, 8, 9, 44, 45 and 46, shall not apply to-
>
> (b) any mine engaged in the extraction of kankar, murrum, laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, road metal, earth, fullers earth and lime stone :
>
> Provided that-
>
> (i) the workings do not extend below superjacent ground; or
>
> (ii) where it is an open cast working-
>
> (a) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres;
>
> (b) the number of persons employed on any one day does not exceed fifty; and
>
> (c) explosives are not used in connection with the excavation."

Since the workings in these stone quarries extend below superjacent ground and they are not 'open cast workings' and moreover explosives are admittedly used in connection with the excavation, the conditions set out in the proviso are not fulfilled and hence the exclusion of the provisions of the Mines Act 1952 (other than the excepted sections) is not attracted and all the provisions of the Mines Act 1952 apply to these stone quarries. It may also be noted that the definition of 'mine' in section 2 (j) includes in Clause (x) any premises or part thereof in or adjacent and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals.... is being carried on." Now obviously stone crushing is a process ancillary to the getting, dressing or preparation for sale of stone quarried from the stone quarries and therefore if the stone crushing activity is carried on in premises in or adjacent to a stone quarry and it belongs to the same owner as the stone quarry, it would be subject to the discipline of the provisions of the Mines Act 1952 and all workmen employed in connection with such stone crushers would be entitled to the benefit of the provisions of that Act. It will, thus, be seen that all the provisions of the Mines Act, 1952 are applicable to the workmen employed in the stone quarries as also to the workmen employed in connection with stone crushers, where the stone crusher is situate in or adjoining to a stone quarry and belongs to the same owner as the stone quarry. Now the provisions of the Mines Act, 1952 which are material are those set out in Chapters V, VI and VII, Chapter V dealing with provisions as to health and safety, Chapter VI, with hours and limitation of employment and Chapter VII, with leave with wages. The provisions contained in these three Chapters confer certain rights and benefits on the workmen employed in the stone quarries and stone crushers and these rights and benefits are intended to secure to the workmen just and humane conditions of work ensuring a decent standard of life with basic human dignity. We shall have occasion to consider some of these rights and benefits when we deal with the specific complaints made on behalf of the petitioner, but we may point out at this stage that the most important rights and benefits conferred on the workmen are those relating to their health and safety which include provisions as to drinking water, conservancy and injuries arising out of accidents, in regard to which detailed requirements are laid down in Chapters V, VI and IX of the Mines Rules, 1955. We may also point out that the obligation of complying with these provisions of the Mines Act, 1952 and the Mines Rules, 1955 rests on the owner, agent and manager of every stone quarry and stone crusher, because section 18 declares that the owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of the Act and of the regulations, rules and by-laws and of any orders made, under the Act. The 'owner' is defined in section 2 (1) of the Mines Act, 1952 to mean "any person who is the immediate proprietor or lessee or occupier of the mine or any part-thereof...but does not include a person who merely receives a royalty, rent or fine from the mine or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof." Since the stone quarries in the present case are not being exploited by the State of Haryana though it is the owner of the stone quarries, but are being given out on lease by auction, the mine-lessees who are not only lessees but also occupiers of the stone quarries are the owners of the stone quarries within the meaning of that expression as used in section 2(1) and so also are the owners of stone crushers in relation to their establishment. The mine-lessees and owners of stone crushers are, therefore, liable under section 18 of the Mines Act, 1952 to carry out their operations in accordance with the provisions of the Mines Act, 1952 and the Mines Rules, 1955 and other Rules and Regulations made under that Act and to ensure that the rights and benefits conferred by these provisions are actually and concretely made available to the workmen. The Central Government is entrusted under the Mines Act 1952 with the responsibility of securing compliance with the provisions of that Act and of the Mines Rules 1955 and other Rules and Regulations made under that Act and it is the primary obligation of the Central Government to ensure that these provisions are complied with by the mine-lessees and stone crusher owners. The State of Haryana is also, for reasons which we have already discussed, under an obligation to take all necessary steps for the purpose of securing compliance with these provisions by the mine-lessees and owners of stone crushers. The State of Haryana has in fact amended the Punjab Minor Mineral Concession Rules 1964 in their application to the State of Haryana by issuing the Punjab Minor Mineral Concession (Haryana First Amendment) Rules 1982 on 6th December 1982 and substituted a new clause 16 in Form F, a new clause 13 in Form L and a new clause 10 in Form N providing that the lessee/lessees or the contractor/contractors, as the case may be,

> "shall abide by the provisions of Mines Act, 1952, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the rules and regulations framed thereunder and also the provisions of other labour laws both Central and State as are applicable to the workmen engaged in the mines, and quarries relating to the provisions of drinking water, rest shelters, dwelling houses, latrines and first aid and medical facilities in particular and other safety and welfare

> provisions in general, to the satisfaction of the competent authorities under the aforesaid Acts, Rules and Regulations and also to the satisfaction of the District Magistrate concerned. In the case of non-compliance of any of the provisions of the enactments as aforesaid, the State Government or any officer authorised by it in this behalf may terminate the contract by giving one month's notice with forfeiture of security deposited or in the alternative the State Labour Department may remedy the breach/ breaches by providing the welfare and safety measures as provided in the aforesaid enactments at the expense and cost of the contractor/contractors. The amount thus spent shall be recovered from the contractor/contractors by the Industries Department and reimbursed to Labour Department."

The State of Haryana is therefore, in any event, bound to take action to enforce the provisions of the Mines Act 1952 and the Mines Rules 1955 and other Rules and Regulations made under that Act for the benefit of the workmen.

17. We may then turn to the provisions of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter referred to as the Inter State Migrant Workmen Act). This Act was brought into force in the State of Haryana with effect from 2nd October 1980 and the authorities under this Act were notified on 21st July 1982. We may, therefore, proceed on the basis that the provisions of this Act became enforceable, if not from 2nd October 1980 at least from 21st July 1982. Now this Act by sub-section (4) of Section (1) applies to every establishment in which five or more inter-State migrant workmen are employed or were employed on any day of the preceding twelve months and so also it applies to every contractor who employs or employed five or more inter-State migrant workmen on any day of the preceding twelve months. Section (2) sub-section (1) Clause (b) of the Act defines contractor, in relation to an establishment, to mean "a person who undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a given result for the establishment, other than a mere supply of goods and articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, khatedar, sardar, agent or any other person, by whatever name called, who recruits or employs workmen." Clause (e) of sub-section (1) of Section (2) defines "Inter-State migrant workmen" to means "any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment." The expression "principal employer" is defined by clause (g) of sub-section (1) of Section 2 to mean "in relation to a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named." Obviously, therefore, the mine-lessees and owners of stone crushers in the present case would be principal employers within the meaning of that expression as used in the Inter-State Migrant Workmen Act. Section 4 provides for registration of every principal employer of an establishment to which the Act applies and Section 6 enacts that no principal employer of an establishment to which this Act applies, shall employ inter-State migrant workmen in the establishment unless a certificate of registration in respect of such establishment is issued under the Act in force. Similarly, Section 8 sub-section (1) provides that with effect from such date as the appropriate Government may by Notification in the

Official Gazette appoint no contractor to whom the Act applies shall recruit any person in a State for the purpose of employing him in any establishment situated in another State, except under and in accordance with a licence issued in that behalf by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the recruitment is made, nor shall he employ as workmen for the execution of any work in any establishment in any State, persons from another State except under and in accordance with a licence issued in that behalf by the licensing officer appointed by the appropriate Government having jurisdiction in relation to the area wherein the establishment is situated. Sub-section (2) of Section 8 declares that a licence under sub-section (1) may contain such conditions including, in particular, the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities in respect of the inter-State migrant workmen, as the appropriate Government may deem fit to impose in accordance with the Rules, if any, made under Section 35. Section 12 imposes certain duties and obligations on contractors which include *inter alia* the duty to issue to every inter-State migrant workman a pass-book containing various particulars regarding recruitment and employment of the workman as also to pay to the workman the return fare from the place of employment to the place of residence in the home State when he ceases to be employed. Rule 23 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules 1980 (hereinafter referred to as Inter-State Migrant Workmen Rules) sets out certain additional particulars which must be included in the pass-book to be issued to every inter-State migrant workman. Section 13 then proceeds to lay down the wage rates, holidays, hours of work and other conditions of service of an inter-State migrant workman and provides *inter alia* that in no case shall a inter-State migrant workman be paid less than the wages fixed under the Minimum Wages Act 1948, and the wages shall be paid to an inter-State migrant workman in cash. The detailed particulars in regard to wages payable to an inter-State migrant workman are laid down in Rules 25 to 35 of the Inter-State Migrant Workmen Rules. Then follows Section 14 which provides that there shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, a displacement allowance and the amount of displacement allowance shall not be refundable but shall be in addition to the wages or other amounts payable to him. There is also a provision made in Section 15 for payment to an inter-State migrant workman of a journey allowance of a sum not less than the fare from the place of residence in his State to the place of work in the other State, both for outward and return journeys and this Section also enacts that the workman shall be entitled to payment of wages during the period of such journeys as if he was on duty. Section 16 lays a duty on every contractor employing inter-State migrant workmen in connection with the work of an establishment to provide various other facilities particulars of which are to be found in Rules 36 to 45 of the Inter-State Migrant Workmen Rules. These facilities include medical facilities, protective clothing, drinking water, latrines, urinals and washing facilities, rest rooms, canteens, creche and residential accommodation. The obligation to provide these facilities is in relation to the inter-State migrant workmen employed in an establishment to which the Act applies. But this liability is not confined only to the contractor, because Section 18 provides in so many terms that if any allowance required to be paid under-section 14 or 15 to an inter-

State migrant workman is not paid by the contractor or if any facility specified in Section 16 is not provided for the benefit of such workman, such allowance shall be paid or as the case may be, the facility shall be provided by the principal employer within such time as may be prescribed by the Rules and all the allowances paid by the principal employer or all the expenses incurred by him in this connection may be recovered by him from the contractor either by deduction from the amount payable to the contractor or as a debt payable by the contractor. Section 25 and 26 make it an offence for any one to contravene any of the provisions of the Inter-State Migrant Workmen Act or Inter-State Migrant Workmen Rules and Section 30 gives over-riding effect to the provisions of the Inter-State Migrant Workmen Act over any other law or any agreement or contract of service or any standing orders. These are broadly the relevant provisions of the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules which may call for consideration.

18. But the question arises whether the Inter-State Migrant Workmen Act applies to the workmen employed in the stone quarries and the stone crushers. Now it was not disputed on behalf of the State of Haryana and indeed it was clear from the Report of Dr. Patwardhan that most of the workmen employed in the stone quarries and stone crushers come from Uttar Pradesh, Madhya Pradesh, Rajasthan, Tamilnadu and Andhra Pradesh and there are only a few workmen from Haryana. It is only if 5 or more out of these workmen coming from States other than Haryana are inter-State migrant workmen within the meaning of that expression as defined in Section 2 sub-section (1) clause (e) of the Inter-State Migrant Workmen Act that the establishment in which they are employed would be covered by the Inter-State Migrant Workmen Act. It would therefore have to be determined in case of each stone quarry and each stone crusher whether there are 5 or more inter-State migrant workmen employed in the establishment and if there are, the provisions of the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules would become applicable to such establishment. The Union of India in a submission filed on its behalf by Miss Subhashini has taken up the stand that the workmen employed in the stone quarries and stone crushers "are coming to join the service in the stone quarries of their own volition and they are not recruited by any agent for being migrated from any State" and "as such they do not come under the definition of the term" inter-State migrant workman. We would have ordinarily been inclined to accept this statement made on behalf of the Union of India, but we find that, according to the Report of Dr. Patwardhan, the modus operandi that is followed for the purpose of recruitment of workmen is "that the stone crusher owners or the lessees-holders ask the thekedar or jamadar of the mine to fetch people from various States to work in the mines" and some times "the jamadar or thekedar communicates the need for workers to old hands at the quarries so that they could bring in people on their return from their villages or their respective States". Now if what has been reported by Dr. Patwardhan is true, there can be no doubt that the workmen employed in the stone quarries and stone crushers would be inter-State migrant workmen. The thekedar or jamadar who is engaged by the mine lessees or the stone-crusher owners to recruit workmen or employ them on behalf of the mine lessees or stone crusher owners would clearly be a `contractor' within the meaning of that term as defined in Section 2 sub-section(1) clause (b) and the workmen recruited by or through him from other States for employment in the stone quarries and stone crushers in the State of Haryana would undoubtedly be inter-State migrant workmen. Even when the thekedar or jamadar recruits or employs workmen for the stone quarries and stone crushers by sending word through the "old hands", the workmen so recruited or employed would be inter-State migrant workmen, because the "old hands" would be really acting as agents of the thekedar or jamadar for the purpose of recruiting or employing workmen. The Inter-State Migrant Workmen Act being a piece of social welfare legislation intended to effectuate the Directive Principles of State Policy and ensure decent living and working conditions for the workmen when they come from other States and are in a totally strange environment where by reason of their poverty, ignorance and illiteracy, they would be totally unorganised and helpless and would become easy victims of exploitation, it must be given a broad and expansive interpretation so as to prevent the mischief and advance the remedy and therefore, even when the workmen are recruited or employed by the jamadar or thekedar by operating through the "old hands", they must be regarded as inter-State migrant workmen entitled to the benefit of the provisions of the Inter-State Migrant Workmen Act and the Inter-State Workmen Rules. The Report of Dr. Patwardhan also points out one other aspect of the matter : according to him, there is invariably "an understanding between the jamadar or thekedar and the owners of stone crushers holding leases of stone quarries as to the rate of output of stone to be fed through the crushers" and thus the jamadar or thekedar is clearly a `contractor' of the stone crusher owners and the workmen recruited or employed by him on behalf of the owners of stone crushers are inter-State migrant workmen. We entirely agree with this view put forward by Dr. Patwardhan in his Report and we have no doubt that if there is any agreement or understanding between the jamadar or thekedar on the one hand and the owners of stone crushers on the other, that the jamadar or thekedar will ensure a certain rate of output of stone to be fed to the stone crushers, the jamadar or thekedar would be a `contractor' and the workmen recruited or employed by him on behalf of the stone crusher owners would be inter-State migrant workmen. But whether in any particular stone quarry or stone crusher the workmen employed are inter-State migrant workmen on the application of this test laid down by us and if so, how many of them are such inter-State migrant workmen, is a matter which would have to be investigated and determined and that is what must be done if we are to make the provisions of the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules meaningful for these workmen who are recruited from other States and who come to the stone quarries and stone crushers in the State of Haryana. We may point out that in addition to the rights and benefits conferred upon him under the inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules, an inter-State migrant workman is also, by reason of Section 21, entitled to the benefit of the provisions contained in the Workmen's Compensation Act 1923, The Payment of Wages Act 1936, The Employees' State Insurance Act 1948, The Employees' Provident Funds and Misc. Provisions Act, 1952, and the Maternity Benefit Act 1961. The obligation to give effect to the provisions contained in these various laws is not only that of the jamadar or thekedar and the mine-lessees and stone crusher owners (provided of course there are 5 or more inter-State migrant workmen employed in the establishment) but also that of the Central Government because the Central Government being the "appropriate Government" within the meaning of Section 2 (1)(a) is under an obligation to take necessary steps for the purpose of securing compliance with these provisions by the thekedar or jamadar and mine-lessees and owners of stone crushers. The State ~~of~~ Haryana is also for reasons already discussed above bound to ensure that these provisions are observed by the thekedar or jamadar and mine-lessees and owners of stone crushers.

19. We then turn to consider the provisions of the Contract Labour (Regulation and Abolition) Act 1970 (hereinafter referred to as the Contract Labour Act). This Act applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour and to every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen. The expression "appropriate government" is defined in Section 2 sub-section (1) clause (a) and so far as the stone quarries and stone crushers are concerned, the Central Government is the `appropriate Government'. Section 2 sub-section (1) clause (b) states that a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with the work of by or through a contractor and "contractor" is defined in clause (c) of that sub-section to mean, in relation to an establishment, "a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor". The expression "principal employer" is defined in clause (g) of sub-section (1) of section 2 and for the purpose of a mine, it means the owner or agent of the mine and therefore, so far as the stone quarries and stone crushers are concerned, the mine lessees and owners of stone crushers would be the principal employers. Then there are provisions in the Contract Labour Act for registration of establishment by every principal employer and for licensing of every contractor to whom the Act applies. But more importantly, Sections 16 to 19 impose a duty on every contractor to provide canteens, rest rooms, first aid facilities and other facilities and Section 20 enacts that if any amenity required to be provided under section 16, 17, 18 or 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor, such amenity shall be provided by the principal employer and all expenses incurred by the principal employer in providing such amenity may be recovered by the principal employer from the contractor. Every contractor is made responsible under-section 21 for payment of wages to each worker employed by him as contract labour and such wages are to be disbursed in the presence of a representative duly authorised by the principal employer. Now if the jamadar or thekedar in a stone quarry or stone crusher is a `contractor' within the meaning of the definition of that term in the Inter-State Migrant Workmen Act, he would a fortiorari be a `contractor' also for the purpose of Contract Labour Act and any workmen hired in or in connection with the work of a stone quarry or stone crusher by or through the jamadar or thekedar would be workmen entitled to the benefit of the provisions of the Contract Labour Act. There are elaborate Rules made under the Contract Labour Act called the Contract Labour (Regulation and Abolition) Central Rules 1971 (hereinafter referred to as the Contract Labour Rules) and these Rules not only deal with the procedure for application and grant of registration to a principal employer and licence to a contractor, but also particularise the details of the various welfare and other facilities directed to be provided to the contract labour by Section 16, 17, 18 and 19 of the Contract Labour Act. Where therefore the thekedar or jamadar is a `contractor' and the workmen are employed as `contract labour' within the meaning of these expressions as used in the Contract Labour Act, the contractor as well as the principal employer would be liable to comply with the provisions of the Contract Labour Act and the Contract Labour Rules and to provide to the contract labour rights and benefits conferred by these provisions. The Central Government being the "appropriate government" within the meaning of Section 2 sub-section (1) clause (a) would be responsible for ensuring compliance with the provisions of the Contract Labour Act and the Contract Labour Rules by the mine-lessees and stone crusher owners and the thekedar or jamadar. So also, for reasons which we have already discussed while dealing with the applicability of the Mines Act 1952 and the Inter-State Migrant Workmen Act, the State of Haryana would be under an obligation to enforce the provisions of the Contract Labour Act and the Contract Labour Rules for the benefit of the workmen.

20. Turning to the provisions of the Minimum Wages Act 1948, there can be no doubt and indeed this was not disputed on behalf of the respondents, that the Minimum Wages Act 1948 is applicable to workmen employed in the stone quarries and stone crushers. The minimum wage fixed for miners by the Notification of the Central Government dated 2nd December 1981 is Rs. 9.75 per day for those working above the ground and Rs. 11.25 per day for those working below the ground. Moreover the Notification prescribes a separate minimum wage for the occupation of a shot firer, stone breaker, stone carrier, mud remover and water carrier. There is a minimum wage prescribed in the Notification for each of these occupations. The question is whether the workmen employed in the stone quarries and stone crushers are paid minimum wage for the work done by them. The Report of Dr. Patwardhan alleges that the mode of payment to the workmen employed in stone quarrying operations is such that after deduction of the amounts spent on explosives and drilling of holes, which amount has to be borne by the workmen out of their wages, what is left to the workmen is less than the minimum wage. It is also stated in the Report of Dr. Patwardhan that the workmen employed in the stone quarries not only quarry the stone but also carry out the work of a shot firer and a stone breaker, though the work of a shot firer cannot be done by them without proper training as provided in the Mines Vocational Training Rules 1966 and for this work of a shot firer and a stone breaker carried out by them, they do not get the minimum wage stipulated for the occupation of a shot firer or a stone breaker and more over since they are piece-rated workers, their output falls because of the other jobs they are required to carry out with the result that they are deprived of the minimum wage which they should otherwise receive. We are not in a position at the present stage to give a definite finding that what is stated in the Report of Dr. Patwardhan is true, but there can be no doubt that whatever be the mode of payment followed by the mine lessees and stone crusher owners, the workmen must get nothing less than the minimum wage for the job which is being carried out by them and if they are required to carry out additionally any of the functions pertaining to another job or occupation for which a separate minimum wage is prescribed, they must be paid a proportionate part of such minimum wage in addition to the minimum wage payable to them for the work primarily carried out by them. We would also suggest that the system of payment which is being followed in the stone quarries and stone crushers, under which the expenses of the explosives and of drilling holes are to be borne by the workmen out of their own wages, should be changed and the explosives required for carrying out blasting should be supplied by the mine lessees or the jamadar or thekedar without any deduction being made out of the wages of the workmen and the work of drilling holes and shot firing should be entrusted only to those who have received the requisite training under the Mines Vocational Training Rules 1966. We would direct the Central Government and the State of Haryana to take necessary steps in this behalf. So far as the complaint of the petitioner that the workmen employed in the stone quarries and stone crushers are not being paid the minimum wages due and payable for the work carried out by them is concerned, it is a matter which would have to be investigated and determined in the light of the law laid down by us.

21. Lastly, we must consider the provisions of the Bonded Labour System (Abolition) Act 1976. We have already pointed out that many of the States are not prepared to admit the existence of bonded labour in their territories and the State of Haryana is no exception. But in order to determine whether there is any bonded labour in the stone quarries and stone crushers in the Faridabad area of the State of Haryana, it is necessary to examine some of the relevant provisions of the Bonded Labour System (Abolition) Act 1976. This Act was enacted with a view to giving effect to Article 23 of the Constitution which prohibits traffic in human beings and begar and other similar forms of forced labour. We have had occasion to consider the true scope and dimension of this Article of the Constitution in *People's Union for Democratic Rights v Union of India* 1983 SCR (1) 456, commonly known as the `Asiad workers' case and it is not necessary for us to say anything more about it in the present judgment. Suffice it to state that this Act is intended to strike against the system of bonded labour which has been a shameful scar on the Indian social scene for decades and which has continued to disfigure the life of the nation even after independence. The Act was brought into force through out the length and breadth of the country with effect from 25th October 1975, which means that the Act has been in force now for almost 8 years and if properly implemented, it should have by this time brought about complete identification, freeing and rehabilitation of bonded labour. But as official, semi-official and non-official reports show, we have yet to go a long way in wiping out this outrage against humanity. Clause (d) of Section 2 defines "bonded debt" to mean an advance obtained or presumed to have been obtained, by a bonded labourer, under or in pursuance of, the bonded labour system. The expression `bonded labourer' is defined in clause (f) to mean "a labourer who incurs, or has, or is presumed to have incurred a bonded debt". Clause (g) defines "bonded labour system" to mean :

> "the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,-
>
> (i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or
>
> (ii) in pursuance of any customary or social obligation, or
>
> (iii) for any economic consideration received by him or by any of his lineal ascendants or descendants, or he would-
>
> (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages

> or for nominal wages, or
>
> (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
>
> (3) forfeit the right to move freely throughout the territory of India, or
>
> (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him."

The expression "nominal wages" is defined in clause (i) of Section 2 to mean, in relation to any labour, a wage which is less than-

> (a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force, and
>
> (b) where no such wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers working in the same locality."

Section 4 is the material section which provides for abolition of bonded labour system and it runs as follows :

> "4(1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.
>
> (2) After the commencement of this Act, no person shall-
>
> (a) make any advance under, or in pursuance of, the bonded labour system, or
>
> (b) compel any person to render any bonded labour or other form of forced labour.

Section 5 invalidates any custom or tradition or any contract agreement or other instrument by virtue of which any person or any member of the family or dependent of such person is required to do any work or render any service as a bonded labourer. Section 6 provides *inter alia* that on the commencement of the Act, every obligation of a bonded labourer to repay any bonded debt or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished. There are certain other consequential provisions in Section 7 to 9 but it is not necessary to refer to them. Sections 10 to 12 impose a duty on every District Magistrate and every officer to whom power may be delegated by him, to inquire whether, after the commencement of the Act, any bonded labour system or any other form of forced labour is being enforced by or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such inquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour, he is required forthwith to take the necessary action to eradicate the enforcement of such forced labour. Section 15 provides for constitution of a Vigilance Committee in each District and each sub-division of a District and sets out what shall be the composition of each Vigilance Committee. The functions of the Vigilance Committee are set out in Section 14 and among other things, that Section provides that the Vigilance Committee shall be responsible *inter alia* to advise the District Magistrate as to the efforts made and action taken, to ensure that the provisions of the Act or any Rule made thereunder are properly implemented, to provide for the economic and social rehabilitation of the freed bonded labourers and to keep an eye on the number of offences of which cognizance has been taken under the Act. Then comes Section 15 which lays down that whenever any debt is claimed by any labourer or a Vigilance Committee to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor. These are some of the material provisions of the Bonded Labour System (Abolition) Act 1976 which need to be considered.

22. It is a matter of regret that though Section 13 provides for constitution of a Vigilance Committee in each District and each sub-division of a District, the Government of Haryana, for some reason or the other, did not constitute any Vigilance Committee until its attention was drawn to this requirement of the law by this Court. It may be that according to the Government of Haryana there were not at any time any bonded labourers within its territories, but even so Vigilance Committees are required by Section 13 to be constituted, because the function of the Vigilance Committee is to identify bonded labourers, if there are any, and to free and rehabilitate them and it would not be right for the State Government not to constitute Vigilance Committees on the assumption that there are no bonded labourers at all. But we are glad to find that the Government of Haryana has now constituted a Vigilance Committee in each District. It does not appear from the record whether a Vigilance Committee has been constituted also in each sub-division of a District but we have no doubt that the Government of Haryana will without any delay and at any rate within six weeks from today constitute a Vigilance Committee in each sub-division and thus comply with the requirement of Section 13 of the Act. We may point out that in constituting Vigilance Committee in each District and sub-division, the Haryana Government would do well to include representatives of non-political social action groups operating at the grass root level, for it is only through such social action groups and voluntary agencies that the problem of identification of bonded labour can be effectively solved.

23. It was contended by the learned Additional Solicitor General on behalf of the State of Haryana that in the stone quarries and stone crushers there might be forced labourers but they were not bonded labourers within the meaning of that expression as used in the Act, since a labourer would be a bonded labourer only if he has or is presumed to have incurred a bonded debt and there was nothing in the present case to show that the workmen employed in the stone quarries and stone crushers had incurred or could be presumed to have incurred any bonded debt. It was not enough, contended that learned Additional Solicitor General, for the petitioner merely to show that the workmen were providing forced labour in that they were not allowed to leave the premises of the establishment, but it was further necessary to show that they were working under the bonded labour system. The learned Additional Solicitor General also submitted that in any event, even if the workmen filed affidavits to the effect that they had taken advances from thekedar or jamadar and or mine lessees and/or stone crusher owners and they were not allowed to leave the premises of the establishment until the advances were paid of, that would not be enough evidence for the Court to hold that they were bonded labourers, because the mine-lessees and stone crusher owners had no opportunity to cross-examine the workmen making such affidavits. This contention was seriously pressed by the learned Additional Solicitor General on behalf of the State of Haryana, but as we shall presently show, there is no substance in this contention. We may point out that in the course of the arguments we did suggest to the learned Additional Solicitor General that even if the workmen were not bonded labourers in the strict sense of the term but were merely forced to provide labour, should the State Government not accept liability for freeing and rehabilitating them, particularly in view of the Directive Principles of State Policy. The State of Haryana was however not prepared to come forward with any proposal in this behalf.

24. Now it is clear that bonded labour is a form of forced labour and Section 12 of the Bonded Labour System (Abolition) Act 1976 recognises this self-evident proposition by laying a duty on every District Magistrate and every officer specified by him to inquire whether any bonded labour system or any other form of forced labour is being enforced by or on behaif of any person and, if so, take such action as may be necessary to eradicate the enforcement of such forced labour. The thrust of the Act is against the continuance of any form of forced labour. It is of course true that, strictly speaking, a bonded labourer means a labourer who incurs or has or is presumed to have incur a bonded debt and a bonded debt means an advance obtained or presumed to have been obtained by a bonded labourer under or in pursuance of the bonded labour system and it would therefore appear that before a labourer can be regarded as a bonded labourer, he must not only be forced to provide labour to the employer but he must have also received an advance or other economic consideration from the employer unless he is made to provide forced labour in pursuance of any custom or social obligation or by reason of his birth in any particular caste or community. It was on the basis of this definitional requirement that the learned Additional Solicitor General on behalf of the State of Haryana put forward the argument that even if the workmen employed in the stone quarries and stone crushers were being compelled to provide forced labour, they were not bonded labourers, since it was not shown by them or by the petitioner that they were doing so in consideration of an advance or other economic consideration received from the mine-lessees and owners of stone crushers. Now if this contention of the learned Additional Solicitor General were well-founded, it would become almost impossible to enforce the provisions of the Bonded Labour System (Abolition) Act 1976 because in every case where bonded labourers are sought to be identified for the purpose of release and rehabilitation under the provisions of the Act, the State Authorities as also the employer would be entitled to insist that the bonded labourers must first prove that they are providing forced labour in consideration of an advance or other economic consideration received by them and then only they would be eligible for the benefits provided under the Act and this would make it extremely difficult, if not impossible, for the labourers to establish that they are bonded labourers because they would have no evidence at all to prove that any advance or economic consideration was provided to them by the employer and since employment of bonded labourers is a penal offence under the Act the employer would immediately, without any hesitation, disown having given any advance or economic consideration to the bonded labourers. It is indeed difficult to understand how the State Government which is constitutionally mandated to bring about change in the life conditions of the poor and the down-trodden and to ensure social justice to them, could possibly take up the stand that the labourers must prove that they are made to provide forced labour in consideration of an advance or other economic consideration received from the employer and are therefore bonded labourers. It is indeed a matter of regret that the State Government should have insisted on a formal, rigid and legalistic approach in the matter of a statute which is one of the most important measures for ensuring human dignity to these unfortunate specimens of humanity who are exciles of civilization and who are leading a life of abject misery and destitution. It would be cruel to insist that a bonded labourer in order to derive the benefits of this social welfare legislation, should have to go through [illegible] formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to the rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book. It is now statistically established that most of bonded labourers are members of Scheduled Castes and Scheduled Tribes or other backward classes and ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, unless he has received some advance or other economic consideration from the employer and under the pretext of not having returned such advance or other economic consideration, he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants. Therefore, whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act. The State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourers on the plea that though the concerned labourers may be providing forced labour, the State Government does not owe any obligation to them unless and until they show in an appropriate legal proceeding conduced according to the rules of adversary system of justice, that they are bonded labourers.

25. The first question that arises in regard to the implementation of the Bonded Labour System (Abolition) Act 1976 is that of identification of bonded labour. One major handicap which impedes the identification of bonded labour is the reluctance of the administration to admit the existence of bonded labour, even where it is prevalent. It is therefore necessary to impress upon the administration that it does not help to ostrich-like bury its head in the sand and ignore the prevalence of bonded labour, for it is not the existence of bonded labour that is a slur on the administration but its failure to eradicate it and moreover not taking the necessary steps for the purpose of wiping out this blot on the fair name of the State is a breach of its constitutional obligation. We would therefore direct the Government of Haryana and also suggest to the other State Governments, to take steps to sensities the officers concerned with the implementation of the Act to this acute human problem and its socio-economic para-meters. Moreover it may be noted that the District Magistrates have a central role to play under the provisions of the Act and the State Governments would therefore do well to instruct the District Magistrates to take up the work of identification of bonded labour as one of their top priority tasks. There are certain areas of concentration of bonded labour which can be easily identified on the basis of various studies and reports made by governmental authorities, social action groups and social scientists from time to time. These areas of concentration of bonded labour are mostly to be found in stone quarries, brick kilns and amongst agricultural landless labourers and such areas must be mapped out by each State Government and task forces should be assigned for identification and release of bonded labour. Labour camps should be held periodically in these areas with a view to educating the labourers and for this purpose, the assistance of the National Labour Institute may be taken, because the National Labour Institute has the requisite expertise and experience of holding such camps and it should be associated with the organisation and conduct of such camps and in each such camp, individuals with organisational capability or potential should be identified and given training in the work of identification and release of bonded labour. More importantly non-political social action groups and voluntary agencies and particularly those with a record of honest and competent service for Scheduled Castes and Scheduled Tribes, agricultural labourers and other unorganised workmen should be involved in the task of identification and release of bonded labourers, for it is primarily through such social action groups and voluntary agencies alone that it will be possible to eradicate the bonded labour system, because social action groups and voluntary agencies comprising men and women dedicated to the cause of emancipation of bonded labour will be able to penetrate through the secrecy under which very often bonded labourers are required to work and discover the existence of bonded labour and help to identify and release bonded labourers. We would therefore direct the Vigilance Committees as also the District Magistrates to take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of the Bonded Labour System (Abolition) Act 1976.

26. The other question arising out of the implementation of the Bonded Labour System (Abolition) Act 1976 is that of rehabilitation of the released bonded labourers and that is also a question of the greatest importance, because if the bonded labourers who are identified and freed, are not rehabilitated, their condition would be much wrose than what it was before during the period of their serfdom and they would become more exposed to exploitation and slide back once again into serfdom even in the absence of any coercion. The bonded labourer who is released would prefer slavery to hunger, a world of 'bondage and (illusory) security' as against a world of freedom and starvation. The State Governments must therefore concentrate on rehabilitation of bonded labour and evolve effective programmes for this purpose. Indeed they are under an obligation to do so under the provisions of the Bonded Labour System (Abolition) Act 1976. It may be pointed out that the concept of rehabilitation has the following four main features as admirably set out in the letter dated 2nd September 1982 addressed by the Secretary, Ministry of Labour, Government of India to the various State Governments;

(i) Psychological rehabilitation must go side by side with physical and economic rehabilitation;

(ii) The physical and economic rehabilitation has 15 major components namely allotment of house-sites and agricultural land, land development, provision of low cost dwelling units, agriculture, provision of credit, horticulture, animal husbandry, training for acquiring new skills and developing existing skills, promoting traditional arts and crafts, provision of wage employment and enforcement of minimum wages, collection and processing of minor forest produce, health, medical care and sanitation, supply of essential commodities, education of children of bonded labourers and protection civil rights;

(iii) There is scope for bringing about an integration among the various central and centrally sponsored schemes and the ongoing schemes of the State Governments for a more qualitative rehabilitation. The essence of such integration is to avoid duplication i.e. pooling resources from different sources for the same purpose. It should be ensured that while funds are not drawn from different sources for the same purpose drawn from different sectors for different components of the rehabilitation scheme are integrated skillfully ; and

(iv) While drawing up any scheme/programme of rehabilitation of freed bonded labour, the latter must necessarily be given the choice between the various alternatives for their rehabilitation and such programme should be finally selected for execution as would need the total requirements of the families of freed bonded labourers to enable them to cross the poverty line on the one hand and to prevent them from sliding back to debt bondage on the other.

27. We would therefore direct the Government of Haryana to draw up a scheme or programme for "a better and more meaningful rehabilition of the freed bonded labourers" in the light of the above guidelines set out by the Secretary to the Government of India, Ministry of Labour in his letter dated 2nd September 1982. The other State Governments are not parties before us and hence we cannot give any direction to them, but we hope and trust that they will also take suitable steps for the purpose of securing identification, release and rehabilition of bonded labourers on the lines indicated by us in this Judgment.

28. We are not at all satisfied that the stand taken on behalf of the State of Haryana that there is no bonded labour at all in the stone quarries and stone crushers is correct. The Report of M/s Ashok Srivastava and Ashok Panda shows that, according to the statements given by some of the workers, they were not allowed to leave the stone quarries and were providing forced labour and this Report also stated that several persons working in the Godhokhor and Lakkarpur stone quarries were forcibly kept by the contractors and they were not allowed to move out of their places and were bonded labourers. The petitioner also filed the affidavits of a large number of workers on 24th August 1982, each of them stating that he is under heavy debt of the thekedar who does not allow him to leave the premises without settling the account. We cannot ignore this material which has been placed before us and unquestioningly accept the statement made on behalf of the State of Haryana that there is no bonded labour in the stone quarries and stone crushers. But at the same time, we do not think that it would be right for us on the basis of this material to come to a definite finding that these workers whose names are given in the Report of M/s Ashok Srivastava and Ashok Panda or who have filed affidavits are providing forced labour or are bonded labourers. It is necessary to direct a further inquiry for the purpose of ascertaining whether any of the labourers working in the stone quarries and stone crushers in Faridabad District are bonded labourers in the light of the law laid down by us in this judgment. We would therefore direct Shri Laxmi Dhar Misra, Joint Secretary in the Ministry of Labour, Government of India, who has considerable experience of the work of identification, release and rehabilitation of bonded labourers, to visit the stone quarries and stone crushers in Faridabad District and ascertain by enquiring from the labourers in each stone quarry or stone crusher whether any of them are being forced to provide labour and are bonded labourers. While making this inquiry, Shri Laxmi Dhar Misra will take care to see that when he interviews the labourers either individually or collectively, neither the

mine-lessees or owners of stone crushers nor the thekedar of jamadar nor any one else is present. Shri Laxmi Dhar Misra will prepare in respect of each stone quarry or stone crusher a statement showing the names and particulars of those who, according to the inquiry made by him, are bonded labourers and he will also ascertain from them whether they want to continue to work in the stone quarry or stone crusher or they want to go back to their homes and if they want to go back, the District Magistrate of Faridabad will on receipt of the statement from Shri Laxmi Dhar Misra, make necessary arrangements for releasing them and provide for their transportation back to their homes and for this purpose the State Government shall make the requisite funds available to the District Magistrate. Shri Laxmi Dhar Misra will also enquire from the mine-lessees and owners of stone crushers as also from the thekedar or jamadar whether there are any advances made by them to the labourers working in the stone quarry or stone crusher and if so, whether there is any documentary evidence in support of the same and he will also ascertain what, according to the mine-lessess and owners of stone crushers or the jamadar or thekedar, are the amounts of loans still remaining outstanding against such labourers. Shri Laxmi Dhar Misra will submit his report to this Court on or before 28th February 1984. We may make it clear that the object and purpose of this inquiry by Shri Laxmi Dhar Misra is not to fasten any liability on the mine-lessees and owners of stone crushers and the jamadar or thekedar on the basis of the Report of Shri Laxmi Dhar Misra but to secure the release and repatriation of those labourers who claim to be bonded labourers and who want to leave the employment and go some where else. We may point out that the problem of bonded labourers is a difficult problem because unless, on being freed from bondage, they are provided proper and adequate rehabilitation, it would not help to merely secure their release. Rather in such cases it would be more in their interest to ensure proper working conditions with full enjoyment of the benefits of social welfare and labour laws so that they can live a healthy decent life. But of course this would only be the next best substitute for release and rehabilitation which must receive the highest priority.

29. So far as implementation of the provisions of the Minimum Wages Act 1948 is concerned we would direct the Central Government and State of Haryana to take necessary steps for the purpose of ensuring that minimum wages are paid to the workmen employed in the stone quarries and stone crushers in accordance with the principles laid down by us in this judgment. It may not be a matter of any consequence as to which mode of payment is followed, whether the workmen are paid on truck basis or on any other basis, but what is essential is and that is what the Minimum Wages Act 1948 requires that the workmen must not receive any wages less than the minimum wage. Even if payment of wages is made to the workmen on truck basis, a formula would have to be evolved by the Central Government and the State of Haryana to ensure that the workmen receive no less than the minimum wage and to facilitate this formula it would have to be provided that the expenses on explosives and drilling holes shall be borne by the mine-lessees and or the jamadar or thekedar and the work of drilling holes and shot firing shall be entrusted only to those who have received requisite training under the Mines Vocational Training Rules 1966. We would direct the Central Government and the State of Haryana to take the necessary steps in this behalf so that within the shortest possible time and as far as possible within six weeks from today, the workmen start actually receiving in their hands a wage not less than the minimum wage. If payment of wages is continued to be made on truck basis, it is necessary that the appropriate officer of the Central Enforcement Machinery must determine the measurement of each truck as to how many cubic feet of stone it can contain and print or inscribe such measurement on the truck, so that appropriate and adequate wage is received by the workmen for the work done by them and they are not cheated out of their legitimate wage. We would also direct the inspecting officers of Central Enforcement Machinery to carry out surprise checks for the purpose of ensuring that the trucks are not loaded beyond their true measurement capacity. Such surprise checks shall be carried out by the inspecting officers of the Central Enforcement Machinery at least once in a week and if it is found that the trucks are loaded in excess of their true measurement capacity and the workmen are thereby deprived of their legitimate wages, the inspecting officers carrying out such checks will immediately bring this fact to the notice of the appropriate authorities for initiation of necessary action against the defaulting mine owners and/or thekedar or jamadar. We would also direct the Central Government and the State of Haryana to ensure that payment of wage is made directly to the workmen by the mine-lessees and stone-crusher owners or at any rate in the presence of a representative of the mine-lessees and stone crusher owners and the inspecting officers of the Central Government as also of the State of Haryana shall carry out periodic checks in order to ensure that payment of the stipulated wage is made to the workmen. Shri Laxmi Dhar Misra will also, while holding an inquiry pursuant to this order, ascertain, by carrying out sample check, whether the workmen employed in any particular stone quarry or stone crusher are actually in receipt of wage not less than the minimum wage and whether the directions given by us this order are being implemented by the authorities.

30. There are also two other matters in respect of which it is necessary for us to give directions. The first is that, apart from poverty and helplessness, one additional reason why the workmen employed in stone quarries and stone crushers are deprived of the rights and benefits conferred upon them under various social welfare laws enacted for their benefit and are subjected to deception and exploitation, is that they are totally ignorant of their rights and entitlements. It is this ignorance which is to some extent responsible for the total denial of the rights and benefits conferred upon them. It is therefore necessary to educate the workmen employed in stone quarries and stone crushers so that they become aware as to what are the rights and benefits to which they are entitled under the various social welfare laws. The knowledge of their rights and entitlements will give them the strength to fight against their employers for securing their legitimate dues and it will go a long way towards reducing, if not eliminating, their exploitation. We have fortunately in our country the Central Board of Workers Education which is entrusted with the function of educating workers in their rights and entitlements and we would therefore direct the Central Board of Workers Education to organise periodic camps near the sites of stone quarries and stone crushers in Faridabad District for the purpose of creating awareness amongs the workmen about the rights and benefits conferred upon them by social welfare laws. This educational campaign shall be taken up by the Central Board of Workers Education as early as possible and the progress made shall be reported to the Court by the Central Board of Workers Education from time to time, at least once in three months.

31. The other matter in regard to which we find it necessary to give directions relates to the tremendous pollution of air by dust thrown out as a result of operation of the stone crushers. When the stone crushers are being operated, they continually throw out large quantities of dust which not only pollute the air, but also affect the visibility and constitute a serious health hazard to the workmen. The entire air in the area where stone crushers are being operated is heavily laden with dust and it is this air which the workmen breathe day in and day out and it is no wonder that many of them contract tuberculosis. We would therefore direct the Central Government and the State of Haryana to immediately take steps for the purpose of ensuring that the stone crusher owners do not continue to foul the air and they adopt either of two devices, namely, keeping a drum of water above the stone crushing machine with arrangement for continuous spraying of water upon it or installation of dust sucking machine. This direction shall be carried out by the Central Government and the State of Haryana in respect of each stone crusher in the Faridabad District and a compliance report shall be made to this Court on or before 28th February, 1984.

32. So far as the provisions of the Contract Labour Act and the Inter-State Migrant Workmen Act are concerned, we have already discussed those provisions and pointed out in what circumstances those provisions would be applicable in relation to workmen employed in the stone quarries and stone crushers. It is not possible for us on the material on record to come to a definite finding whether the provisions of the Contract Labour Act and the Inter-State Migrant Workmen Act are applicable in the case of any particular stone quarry or stone crusher, because it would be a matter for investigation and determination, particularly since it has been disputed by the Central Government that there are any inter-State migrant workmen at all in any of the stone quarries or stone crushers. We would therefore direct Shri Laxmi Dhar Misra to conduct an inquiry in each of the stone quarries and stone crushers in Faridabad District for the purpose of ascertaining whether there are any contract labourers or inter-State migrant workmen in any of these stone quarries or stone crushers, in the light of the interpretation laid down by us in this judgment, and, if so, what is the number of such contract labourers or inter-State migrant workmen in each stone quarry or stone crusher. If Shri Laxmi Dhar Misra finds as a result of his inquiry that the Contract Labour Act and/or the Inter-State Migrant Workmen Act is applicable, he will make a report to that effect to the Court on or before 15th February 1984. We may make it clear that this inquiry by Shri Laxmi Dhar Misra is not directed for the purpose of fastening any liability on the mine-lessees and stone crusher owners or the jamadars and thekedars *proprio vigore* on the basis of such report, but merely for the purpose of considering whether a prima facie case exists on the basis of which action can be initiated by the Central Government, in which the mine-lessees and stone crusher owners and/or the jamadar or thekedars would have an opportunity of contesting the allegation that the Contract Labour Act and/or the Inter-State Migrant Workmen Act applies to their stone quarry or stone crusher and defending such action.

33. We may now take up a few specific complaints urged on behalf of the workmen. The first complaint relates to the failure to provide pure drinking water to the workmen in most of the stone quarries and stone crushers. The Report of M/s Ashok Srivastava and Ashok Panda as also the Report made by Dr. Patwardhan shows that pure drinking water is not made available to the workmen. In Lakkarpur mines the workmen are obliged to take water "from a shallow rivulet covered with thick algae" and that too, "after a walk over a dangerously steep incline". The same situation also prevails in the mines in the Gurukul area as also in the Anangpur mines and in these mines "quite often the upstream and the further down-stream of the rivulet get blocked due to mining of stone and the water becomes stagnant" and the workmen have no other option but to use this water for drinking purposes. It is true that in the lower reaches of Lakkarpur near the road there is a tubewell from which the workmen get water but that is only when they are permitted to do so by the persons operating it. The Report of Dr. Patwardhan also points out that it is the children or women of the workmen who are usually engaged in the work of transporting water from distant places like the tubewell but they are not paid anything for this work which is being done by them. Neither any mine-lessee or stone crusher owner nor any jamadar or thekedar regards it as his duty to make provision for drinking water for the workmen nor does any officer of the Central Government or of the State Government bother to enforce the provisions of law in regard to supply of drinking water. It is clear that, quite apart from the provisions of the Contract Labour Act and the Inter-State Migrant Workmen Act, there is a specific prescription in Section 19 of the Mines Act 1952 and Rules 30 to 32 of the Mines Rule 1955 that the mine-lessees and stone crusher owners shall make effective arrangements for providing and maintaining at suitable points conveniently situated a sufficient supply of cool and wholesome drinking water for all workmen employed in the stone quarries and stone crushers. The quality of drinking water to be provided by them has to be on a scale of at least 2 litres for every person employed at any one time and such drinking water has to be readily available at conveniently accessible points during the whole of the working time. Rule 31 requires that if drinking water is not provided from taps connected with constant water supply system, it should be kept cool in suitable vessels sheltered from weather and such vessels must be emptied, cleaned and refilled every day and steps have to be taken to preserve the water, the storage vessels and the vessels used for drinking water in clean and hygienic condition. The inspectors may also by order in writing require the mine-lessees and stone crusher owners to submit with the least possible delay a certificate from a competent health officer or analyst as to the fitness of the water for human consumption. This obligation has to be carried out by the mine-lessees and stone crusher owners and it is the responsibility of the Central Government as also of the State of Haryana to ensure that this obligation is immediately carried out by the mine-lessees and stone crusher owners. We would therefore direct the Central Government and the State of Haryana to ensure immediately that the mine-lessees and stone crusher owners start supplying pure drinking water to the workmen on a scale of at least 2 litres for every workman by keeping suitable vessels in a shaded place at conveniently accessible points and appointing some one, preferably, amongst the women and/or children of the workmen to look after these vessels. The Central Government and the State of Haryana will also take steps for ensuring that the vessels in which drinking water is kept by the mine-lessees and stone crusher owners are kept in clean and hygienic condition and are emptied, cleaned and refilled every day and they shall also ensure that minimum wage is paid to the women and/or children who look after the vessels. The Chief Labour Commissioner, the Deputy Chief Labour Commissioner, the Assistant Labour Commissioner and the Labour Enforcement Officers of the Government of India as also the appropriate inspecting officers of the Government of Haryana shall supervise strictly the enforcement of this obligation and initiate necessary action if there is any default. The Central Government as also the State of Haryana will also immediately direct the mine-lessees and stone-crusher owners to start obtaining drinking water from any unpolluted source or sources of supply and to transport it by tankers to the work site with sufficient frequency so as to be able to keep the vessels filled up for supply of clean drinking water to the workmen. The Chief Administrator, Faridabad Complex is directed to set up the points from where the mine-lessees and stone crusher owners can, if necessary, obtain supply of potable water for being carried by tankers. These directions given by us shall be promptly and immediately carried out by the appropriate authorities and Shri Laxmi Dhar Misra will, while conducting his inquiry, also ascertain whether these directions have been carried out and pure drinking water has been made available to the workmen in accordance with these directions and submit a report in that behalf to the Court on or before 28th February 1984.

34. The second complaint related to the failure to provide conservancy facilities to the workmen in the stone quarries and stone crushers. Section 20 of the Mines Act 1952 requires that there shall be provided separately for males and females a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the stone quarries and stone crushers and all such latrines and urinals shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition. What should be the number of latrines and urinals to be provided in each stone quarry or stone crusher and what should be the standard of construction to be complied with in erecting the latrines are provided in Rules 33 to 35 of the Mines Rules 1955 and Rule 36 provides that a sufficient number of water taps conveniently accessible shall be provided in or near such latrines and if piped water supply is not available, then a sufficient quantity of water shall be kept stored in suitable receptacles near such latrines. The Report of Dr. Patwardhan shows that there is not a trace of such conservancy facilities in any of the stone quarries and the "vast open mountain dug-up without a thought as to environment is used by men and women and children as one huge open latrine" where the only privacy is that provided by the "curtain drawn by the turned down eyes of women and the turned away eyes of men". This statement made in the Report of Dr. Patwardhan has not been denied in any of the affidavits in reply filed on behalf of the respondents. We would therefore direct the Central Government as also the State Government to ensure that conservancy facilities in the shape of latrines and urinals in accordance with the provisions contained in Section 20 of the Mines Act 1950 and Rules 33 to 36 of the Mines Rules 1955 are provided immediately by mine lessees and owners of stone crushers. This direction shall be carried out at the earliest without any delay and Shri Laxmi Dhar Misra will, while making his inquiry, ascertain whether the mine-lessees and owners of stone crushers in each of the stone quarries and stone crushers visited by him have complied with this direction and a Report in that behalf shall be submitted by Shri Laxmi Dhar Misra on/or before 28th February, 1984.

35. There was also one other complaint made on behalf of the workmen and that related to the absence of any medical or first aid facilities. The Report of Dr. Patwardhan shows that no such facilities are provided to the workmen employed in the stone quarries and stone crushers and this finding was not seriously disputed on behalf of the respondents. It is indeed regrettable that despite there being a mandatory provision for medical and first aid facilities in Section 21 of the Mines Act 1952 and Rules 40 to 45A of the Mines Rules 1955, no medical of first aid facilities seem to be provided in the stone quarries and stone crushers. We would therefore direct the Central Government as also the State Government to take steps to immediately ensure that proper and adequate medical and first aid facilities as required by Section 21 of the Mines Act 1952 and Rules 40 to 45A of the Mines Rules 1955 are provided by the mine-lessees and owners of stone quarries to the workmen. Rule 45 provides that every shot firer and blaster in a mine shall hold first aid qualification specified in Rule 41 and shall carry, while on duty, a first aid outfit consisting of one large sterilized dressing and an ampul of tincture of iodine or other suitable antiseptic. But we find that this requirement is also not observed by the mine-lessees and stone crusher owners and the workmen are required to carry on blasting with explosives without any first aid qualification or first aid outfit. We would therefore direct the Central Government as also the State of Haryana to ensure that every workmen who is required to carry out blasting with explosives should not only be trained under the Mines Vocational Training Rules 1966 but should also hold first aid qualification and he should carry a first aid outfit, while on duty, as required by Rule 45. The Central Government and the State Government will also take steps to secure that proper and adequate medical treatment is provided by the mine-lessees and owners of stone crushers to the workmen employed by them as also to the members of their families and such medical assistance should be made available to them without any cost of transportation or otherwise and the cost of medicines prescribed by the doctors must be reimbursed to them. Where the workmen or the members of their families meet with any serious accident involving fracture or possibility of disability or suffer from any serious illness, the mine-lessees and owners of stone crushers should be required by the Central Government as also the State Government to make arrangements for hospitalisation of such workmen or members of their families at the cost of the mine-lessees and or owners of stone crushers. We would also direct the Central Government and the State of Haryana to ensure that the provisions of the Maternity Benefit Act, 1961, the Maternity Benefit (Mines and Circus) Rules 1963 and the Mines Creche Rules 1966, where applicable in any particular stone quarries or stone crushers, are given effect to by the mine-lessees and owners of stone crushers. These directions given by us shall also be carried out at the earliest without any undue delay and Shri Laxmi Dhar Misra, while conducting his inquiry, will ascertain whether these directions have been complied with and the necessary medical and first aid facilities including hospitalisation have been provided to the workmen and the members of their families.

36. We may point out that the above directions in regard to provision of health and welfare facilities have been given by us only with reference to the provisions of the Mines Act 1952 and the Mines Rules 1955 which are admittedly applicable in the case of stone quarries and stone crushers. We have not given any directions for enforcement of the provisions of the Contract Labour Act and the Inter-State Migrant Workmen Act because it has yet to be determined whether these two statutes are applicable in any particular stone quarry or stone crusher. It is also necessary to point out that whenever any workman suffers any injury or contracts any disease in the course of employment, he is entitled to compensation under the Workmens' Compensation Act 1923, but unfortunately he is very often not in a position to approach the appropriate court or authority for enforcing his claim to compensation and even if he files such a claim, it takes a long time before such claim is disposed of by the court or authority. We would therefore direct that as soon as any workman employed in a stone quarry or stone crusher receives injury or contracts disease in the course of his employment, the concerned mine-lessee or stone crusher owner shall immediately report this fact to the Chief Inspector or Inspecting Officers of the Central Government and/or the State Government and such Inspecting Officers shall immediately provide legal assistance to the workman with a view to enabling him to file a claim for compensation before the appropriate court or authority and they shall also ensure that such claim is pursued vigorously and the amount of compensation awarded to the workman is secured to him. We would like to impress upon the Court or Authority before which a claim for compensation is filed by or on behalf of the workman to dispose of such claim without any undue delay, since delay in the awarding of compensation to the workman would only add to his misery and helplessness and would be nothing sort of gross denial of justice to him. The Inspecting Officers of the Central Government as also of the State Government will visit each stone quarry or stone crusher at least once in a fortnight and ascertain whether there is any workman who is injured or who is suffering rom any disease or illness, and if so, they vill immediately take the necessary steps for he purpose of providing medical and legal ssistance and if they fail to do so, the Central overnment and the State Government, as the ase may be, shall take necessary action gainst the defaulting Inspecting Officer or fficers.

37. We have given these directions to the entral Government and the State of Haryana d we expect the Central Government and e State of Haryana to strictly comply with ese directions. We need not state that if any these direction is not properly carried out the Central Government or the State of aryana, we shall take a very serious view of matter, because we firmly believe that it no use having social welfare laws on the statute book if they are not going to be implemented. We must not be content with the law in books but we must have law in action. If we want our democracy to be a participatory democracy, it is necessary that law must not only speak justice but must also deliver justice.

38. Before parting with this case, we may point out, and this has come to our notice not only through the Report of Dr. Patwardhan but also otherwise, that the magistrates and judicial officers take a very lenient view of violations of labour laws enacted for the benefits of the workmen and let off the defaulting employers with small fines. There have also been occasions where the magistrate and judicial officers have scotched prosecutions and acquitted or discharged the defaulting employers on hyper technicalities. This happens largely because the magistrates and judicial officers are not sufficiently sensitised to the importance of observance of labour laws with the result that the labour laws are allowed to be ignored and breached with utter callousness and indifference and the workmen begin to feel that the defaulting employers can, by paying a fine which hardly touches their pocket, escape from the arm of law and the labour laws supposedly enacted for their benefit are not meant to be observed but are merely decorative appendages intended to assuage the conscience of the workmen. We would therefore strongly impress upon the magistrates and judicial officers to take a strict view of violation of labour laws and to impose adequate punishment on the erring employers so that they may realise that it does not pay to commit a breach of such laws and to deny the benefit of such laws to the workmen.

39. We accordingly allow this writ petition and issue the above directions to the Central Government and the State of Haryana and the various authorities mentioned in the preceding paragraphs of this judgment so that these poor unfortunate workmen who lead a miserable existence in small hovels, exposed to the vagaries of weather, drinking foul water, breathing heavily dust-laden polluted air and breaking and blasting stone all their life, may one day be able to realise that freedom is not only the monopoly of a few but belongs to them all and that they are also equally entitled along with others to participate in the fruits of freedom and developments. These directions may be summarised as follows :

(1) The Government of Haryana will, without any delay and at any rate within six weeks from today, constitute Vigilance Committee in each sub-division of a district in compliance with the requirements of section 13 of the Bonded Labour System (Abolition) Act 1976 keeping in view the guidelines given by us in this judgment.

(2) The Government of Haryana will instruct the district magistrates to take up the work of identification of bonded labour as one of their top priority tasks and to map out areas of concentration of bonded labour which are mostly to be found in stone quarries and brick kilns and assign task forces for identification and release of bonded labour and periodically hold labour camps in these areas with a view to educating the labourers inter alia with the assistance of the National Labour Institute.

(3) The State Government as also the Vigilance Committees and the district magistrates will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of the Bonded Labour System (Abolition) Act, 1976.

(4) The Government of Haryana will draw up within a period of three months from today a scheme or programme for rehabilitation of the freed bonded labourers in the light of the guidelines set out by the Secretary to the Government of India, Ministry of Labour in his letter dated 2nd September 1982 and implement such scheme or programme to the extent found necessary.

(5) The Central Government and the Government of Haryana will take all necessary steps for the purpose of ensuring that minimum wages are paid to the workmen employed in the stone quarries and stone crushers in accordance with the principles laid down in this judgment and this direction shall be carried out within the shortest possible time so that within six weeks from today, the workmen start actually receiving in their hands a wage not less than the minimum wage.

(6) If payment of wages is made on truck basis, the Central Government will direct the appropriate officer of the Central Enforcement Machinery or any other appropriate authority or officer to determine the measurement of each truck as to how many cubic ft. of stone it can contain and print or inscribe such measurement on the truck so that appropriate and adequate wage is received by the workmen for the work done by them and they are not cheated out of their legitimate wage.

(7) The Central Government will direct the inspecting officers of the Central Enforcement Machinery or any other appropriate inspecting officers to carry out surprise checks at least once in a week for the purpose of ensuring that the trucks are not loaded beyond their true measurement capacity and if it is found that the trucks are loaded in excess of the true measurement capacity, the inspecting officers carrying out such

checks will immediately bring this fact to the notice of the appropriate authorities and necessary action shall be initiated against the defaulting mine owner and/ or thekedars or jamadars.

(8) The Central Government and the Government of Haryana will ensure that payment of wages is made directly to the workmen by the mine lessees and stone crusher owners or at any rate in the presence of a representative of the mine lessees or stone crusher owners and the inspecting officers of the Central Government as also of the Government of Haryana shall carry out periodic checks in order to ensure that the payment of the stipulated wage is made to the workmen.

(9) The Central Board of Workers Education will organise periodic camps near the sites of stone quarries and stone crushers in Faridabad district for the purpose of educating the workmen in the rights and benefits conferred upon them by social welfare and labour laws and the progress made shall be reported to this Court by the Central Board of Workers Education at least once in three months.

(10) The Central Government and the Government of Haryana will immediately take steps for the purpose of ensuring that the stone crusher owners do not continue to foul the air and they adopt either of two devices, namely, keeping a drum of water above the stone crushing machine with arrangement for continuous spraying of water upon it or installation of dust sucking machine and a compliance report in regard to this direction shall be made to this Court on or before 28th February, 1984.

(11) The Central Government and the Government of Haryana will immediately ensure that the mine lessees and stone crusher owners start supplying pure drinking water to the workmen on a scale of at least 2 litres for every workman by keeping suitable vessels in a shaded place at conveniently accessible points and such vessels shall be kept in clean and hygienic condition and shall be emptied, cleaned and refilled every day and the appropriate authorities of the Central Government and the Government of Haryana will supervise strictly the enforcement of this direction and initiate necessary action if there is any default.

(12) The Central Government and the Government of Haryana will ensure that minimum wage is paid to the women and/ or children who look after the vessels in which pure drinking water is kept for the workmen.

(13) The Central Government and the Government of Haryana will immediately direct the mine lessees and stone crusher owners to start obtaining drinking water from any unpolluted source or sources of supply and to transport it by tankers to the work site with sufficient frequency so as to be able to keep the vessels filled up for supply of clean drinking water to the workmen and the Chief Administrator, Faridabad Complex will set up the points from where the mine lessees and stone crusher owners can, if necessary, obtain supply of potable water for being carried by tankers.

(14) The Central Government and the State Government will ensure that conservancy facilities in the shape of latrines and urinals in accordance with the provisions contained in section 20 of the Mines Act, 1950 and Rules 33 to 36 of the Mines Rules 1955 are provided at the latest by 15th February 1984.

(15) The Central Government and the State Government will take steps to immediately ensure that appropriate and

adequate medical and first aid facilities as required by section 21 of the Mines Act 1952 and Rules 40 to 45A of the Mines Rules 1955 are provided to the workmen not later than 31st January 1984.

(16) The Central Government and the Government of Haryana will ensure that every workman who is required to carry out blasting with explosives is not only trained under the Mines Vocational Training Rules 1966 but also holds first aid qualification and carries a first aid outfit while on duty as required by Rule 45 of the Mines Rules 1955.

(17) The Central Government and the State Government will immediately take steps to ensure that proper and adequate medical treatment is provided by the mine lessees and owners of stone crushers to the workmen employed by them as also to the members of their families free of cost and such medical assistance shall be made available to them without any cost of transportation or otherwise and the doctor's fees as also the cost of medicines prescribed by the doctors including hospitalisation charges, if any, shall also be reimbursed to them.

(18) The Central Government and the State Government will ensure that the provisions of the Maternity Benefit Act 1961, the Maternity Benefit (Mines and Circus) Rules 1963 and the Mines Creche Rules 1966 where applicable in any particular stone quarry or stone crusher are given effect to by the mine lessees and stone crusher owners.

(19) As soon as any workman employed in a stone quarry or stone crusher receives injury or contracts disease in the course of his employment, the concerned mine lessee or stone crusher owner shall immediately report this fact to the Chief Inspector or Inspecting Officers of the Central Government and/or the State Government and such Inspecting Officers shall immediately provide legal assistance to the workman with a view to enabling him to file a claim for compensation before the appropriate court or authority and they shall also ensure that such claim is pursued vigorously and the amount of compensation awarded to the workman is secured to him.

(20) The Inspecting Officers of the Central Government as also of the State Government will visit each stone quarry or stone crusher at least once in a fortnight and ascertain whether there is any workman who is injured or who is suffering from any disease or illness, and if so, they will immediately take the necessary steps for the purpose of providing medical and legal assistance.

(21) If the Central Government and the Government of Haryana fail to ensure performance of any of the obligations set out in clauses 11, 13, 14 and 15 by the mine lessees and stone crusher owners within the period specified in those respective clauses, such obligation or obligations to the extent to which they are not performed shall be carried out by the Central Government and the Government of Haryana.

We also appoint Shri Laxmi Dhar Misra, Joint Secretary in the Ministry of Labour, Government of India as a Commissioner for the purpose of carrying out the following assignment :

(a) He will visit the stone quarries and stone crushers in Faridabad district and ascertain by enquiring from the labourers in each stone quarry or stone crusher in the manner set out by us whether any of them are being forced to provide labour and are bonded labourers and he will prepare in respect of each stone quarry or stone crusher a statement showing the names and particulars of those who, according to the inquiry made by him, are bonded labourers and he will also ascertain from them whether they want to continue to work in the stone quarry or stone crusher or they want to go away and if he finds that they want to go away, he will furnish particulars in regard to them to the District Magistrate, Faridabad and the District Magistrate will, on receipt of the particulars from Shri Laxmi Dhar Misra, make necessary arrangements for releasing them and provide for their transportation back to their homes and for this purpose the State Government will make the requisite funds available to the District Magistrate.

(b) He will also enquire from the mine lessees and owners of stone crushers as also from the thekedars and jamadars whether there are any advances made by them to the labourers working in the stone quarries or stone crushers and if so, whether there is any documentary evidence in support of the same and he will also ascertain what, according to the mine lessees and owners of stone crushers or the Jamadar or Thekedar, are the amounts of loans still remaining outstanding against such labourers.

(c) He will also ascertain by carrying out sample check whether the workmen employed in any particular stone quarry or stone crusher are actually in receipt of wage not less than the minimum wage and whether the directions given in this order in regard to computation and payment of minimum wage are being implemented by the authorities.

(d) He will conduct an inquiry in each of the stone quarries and stone crushers in Faridabad District for the purpose of ascertaining whether there are any contract labourers or inter-State migrant workmen in any of these stone quarries or stone crushers and if he finds as a result of his inquiry that the Contract Labour Act and/or the Inter-State Migrant Workmen Act is applicable, he will make a report to that effect to the Court.

(e) He will ascertain whether the directions given by us in this judgment regarding effective arrangement for supply of pure drinking water have been carried out by the mine lessees and stone crusher owners and pure drinking water has been made available to the workmen in accordance with those directions.

(f) He will also ascertain whether the mine lessees and owners of stone crushers in each of the stone quarries and stone crushers visited by him have complied with the directions given by us in this judgment regarding provision of conservancy facilities.

(g) He will also ascertain whether the directions given by us in this judgment in regard to provision of first aid facilities and proper and adequate medical treatment including hospitalisation to the workmen and the members of their families are being carried out by the mine lessees and stone crusher owners and the necessary first aid facilities and proper and adequate medical services including hospitalisation are provided to the workmen and the members of their families.

(h) He will also enquire whether the various other directions given by us in this judgment have been and are being carried out by the mine lessees and stone crusher owners.

Shri Laxmi Dhar Misra will carry out this assignment entrusted to him and make his report to the Court on or before 28th February 1984. It will be open to Shri Laxmi Dhar Misra to take the assistance of such other person or persons as he thinks fit including officers or employees in the Ministry of Labour or in the Ministry of Mines, who may be made available by the higher authorities. If Shri Laxmi Dhar Misra finds it necessary, he may request the Court to extend the time for submitting his report by addressing a letter to the Registry of the Court. The State of Haryana will deposit a sum of Rs. 5000/- within two weeks from today for the purpose of meeting the costs and out of pocket expenses of Shri Laxmi Dhar Misra.

40. We have no doubt that if these directions given by us are honestly and sincerely carried out, it will be possible to improve the life conditions of these workmen and ensure social justice to them so that they may be able to breathe the fresh air of social and economic freedom. The Central Government and the State of Haryana will pay to the petitioner's advocate a sum of Rs. 5000/- by way of costs. We are grateful to Mr. Govind Mukhoty for rendering valuable assistance to us in this case.

Pathak, J.— I have read the judgments prepared by my brothers Bhagwati and A.N. Sen, and while I agree with the directions proposed by my brother Bhagwati I think it proper, because of the importance of the questions which arise in such matters, to set forth my own views.

42. Public interest litigation in its present form constitutes a new chapter in our judicial system. It has acquired a significant degree of importance in the jurisprudence practised by our courts and has evoked a lively, if somewhat controversial, response in legal circles, in the media and among the general public. In the United States, it is the name "given to efforts to provide legal representation to groups and interests that have been unrepresented or under-represented in the legal process. These include not only the poor and the disadvantaged but ordinary citizens who, because they cannot afford lawyers to represent them, have lacked access to courts, administrative agencies and other legal forums in which basic policy decisions affecting their interests are made".[1] In our own country, this new class of litigation is justified by its protagonists on the basis generally of vast areas in our population of illiteracy and poverty, of social and economic backwardness, and of an insufficient awareness and appreciation of individual and collective rights. These handicaps have denied millions of our countrymen access to justice. Public interest litigation is said to possess the potential of providing such access in the milieu of a new ethos, in which participating sectors in the administration of justice co-operate in the creation of a system which promises legal relief without cumbersome formality and heavy expenditure. In the result, the legal organisation has taken on a radically new dimension, and correspondingly new perspectives are opening up before judges and lawyers and State Law Agencies in the tasks before them. A crusading zeal is abroad, viewing the present as an opportunity to awaken the political and legal order to the objectives of social justice projected in our constitutional system. New slogans fill the air, and new phrases have entered the legal dictionary, and we hear of the "justicing system"being galvanised into supplying justice to the socio-economic disadvantaged. These urges are responsible for the birth of new judicial concepts and the expanding horizon of juridical power. They claim to represent an increasing emphasis on social welfare and a progressive humanitarianism.

43. On the other side, the attempts of the judge and the lawyer are watched with sceptical concern by those who see interference by the courts in public interest litigation as a series of quixotic forays in a world of unyielding and harsh reality, whose success in the face of opposition bolstered by the inertia and apathy of centuries is bound to be limited in impact and brief in duration. They see judicial endeavour frustrated by the immobility of public concern and a traditional resistance to change, and believe that the temporary success gained is doomed to waste away as a mere ripple in the vastness of a giant slow-moving society. Even the optimistic sense danger to the credibility and legitimacy of the existing judicial system, a feeling contributed no doubt by the apprehension that the region into which the judiciary has ventured appears barren, unchartered and unpredictable, with few guiding posts and direction finding principles, and they fear that a traditionally proven legal structure may yield to the anarchy of purely emotional impulse. To the mind trained in the certainty of the law, of defined principles, of binding precedent, and the common law doctrine of stare decisis, the future is fraught with confusion and disorder in the legal world and severe strains in the constitutional system. At the lowest, there is an uneasy doubt about where we are going.

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[1] Mitchell Rogovin : Public Interest Law, The Next Horizon, American Bar Association Journal 1977 p. 334.

44. Amidst this welter of agitated controversy, I think it appropriate to set down a few considerations which seem to me relevant if public interest litigation is to command broad acceptance. The history of human experience shows that when a revolution in ideas and in action enters the life of a nation, the nascent power so released possesses the potential of throwing the prevailing social order into disarray. In a changing society, wisdom dictates that reform should emerge in the existing polity as an ordered change produced through its nstitutions. Moreover, the pace of change needs to be handled with care lest the nstitutions themselves be endangered.

45. In his Law in the Modern State, Leon Duguit observed: "Any system of public law can be vital only so far as it is based on a given sanction to the following rules : First, the holders of power cannot do certain things; second, there are certain things they must do." p. 26 Traditional legal remedies have been preoccupied largely with the first rule. It is recently that the second has begun substantially to engage the functional attention of the judicial administration. In the United States, the Warren Court achieved a remarkable degree of success in decreeing affirmative action programmes for the benefit of minorities and other socially or economically disadvantaged interests through the avenues of public law. In India, we are beginning to apply a similar concept of constitutional duty.

46. Until the arrival of public interest litigation, civil litigation was patterned exclusively on the traditional model. The traditional conception of adjudication believes a suit to be a means for settling disputes between private parties concerning their private rights. In the usual form, the suit is an organised proceeding between two individual contestants. It deals with a definite framework of facts requiring identification through principles codified by statute and on the basis of which the right-obligation relations between the parties are determined, culminating in the grant or denial of relief by the Court. It is a proceeding confined to the parties, on whose volition depends the fact material brought on the record, with the judge sitting over the contest as a mere passive neutral umpire. Judicial initiative has no significant role.

47. The rigid character of civil litigation conceived as a contest between two individual parties representing their personal interests has been allowed to expand into a representative proceeding where a person can, with the permission of the Court, represent others also having the same interest although not named in the suit. And the disability, temporary or permanent, of a person whose legal right is violated, enables another to represent his interest in a judicial proceeding. They are cases where next friends are permitted by the Court to act for minors and persons of unsound mind, where a person may petition for the release of an illegally detained individual, and where a minority shareholder, complaining of an ultra vires transaction by the management of a company, can sue in the name of the company. Intervenors are allowed to participate in a proceeding involving the decision of legal questions affecting their interests. A rate payer of a local authority has been held entitled to challenge its illegal action. A person conferred by statute the right to participate in the decision-making process of a statutory authority is entitled to seek relief against such decision. In *S.P. Gupta v. Union of India* (1982) 2 S.C.R. 365, this Court has laid down that its jurisdiction can be invoked by a third party in the case of a violation of the constitutional rights of another person or determinate class of persons who, by reason of poverty, helplessness, disability or social or economic disadvantage is unable to move the Court personally for relief. The Court observed further that where the public injury was suffered by an indeterminate class of persons from the breach of a public duty or from the violation of a constitutional provision of the law, any member of the public having sufficient interest can maintain an action for judicial redress for such public injury. The principle was qualified by the reservation that such petitioner should act *bona fide* and not for personal gain or private profit, nor be moved by political or other oblique motivation. The doctrine of standing has thus been enlarged in this country to provide, where reasonably possible, access to justice to large sectors of people for whom so far it had been a matter of despair.

48. It is time indeed for the law to do so. In large measure, the traditional conception of adjudication represented the socio-economic vision prevailing at the turn of the century. The expansion of governmental activity into the life of individuals through programmes of social welfare and development had not yet been foreshadowed. An environment permeated by the doctrine of laissez faire shaped the development of legal jurisprudence. But soon, progressive social and economic forces began to grow stronger and influence the minds of people, and governments, in response to the pressures of egalitarian and socialist-oriented urges, began to enter increasingly upon socio-economic programmes in which legislation and the courts constituted the principal instruments of change. The movement accelerated with the close of the Second World War, and a charter of human rights was written into the political constitutions adopted by most nations emerging from colonial rule even as, on another plane, it altered our basic conception of international law. In India, as the consciousness of social justice spread though our multi-layered social order, the courts began to come under increasing pressure from social action groups petitioning on behalf of the underprivileged and deprived sections of society for the fulfilment of their aspirations. It is not necessary to detail the number of cases of public interest litigation which have entered this Court. It is sufficient to point out that, despite the varying fortune of those cases, public interest litigation constitutes today a significant segment of the Court's docket.

49. In the debate before us, questions of substantial importance have been raised by learned counsel, questions which go to the procedure adopted by the Court and the manner of the exercise of its constitutional powers.

50. This petition invokes the jurisdiction of the Court under Article 32 of the

Constitution, which confers the guaranteed right to move this Court by appropriate proceedings for the enforcement of fundamental rights. The rights exercised is a right to a constitutional remedy, and the jurisdiction invoked is a constitutional jurisdiction. Bearing this in mind, we must also take into account that the provisions of Article 32 do not specifically indicate who can move the Court. In the absence of a confining provision in that respect, it is standing to maintain an action of such nature.

51. As regards the form of the proceeding and its character, Article 32 speaks generally of "appropriate proceedings". It should be a proceeding which can appropriately lead to an adjudication of the claim made for the enforcement of a fundamental right and can result in the grant of effective relief. Article 32 speaks of the Court's power "to issue directions or orders or writs", and the specific reference to "writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari" is by way of illustration only. They do not exhaust the content of the Court's power under Article 32.

52. Entering now into a more controversial area, it is appropriate to consider the nature of the procedure which the court may adopt under Article 32 of the Constitution. So far as the traditional private law is concerned, the procedure follows the accepted pattern and traditional forms associated with it. There can be little dispute there. Does public interest litigation call for somewhat different consideration? Before dealing with this aspect, however, it is necessary to touch on two fundamental matters.

53. First, as to the petition. A practice has grown in the public of invoking the jurisdiction of this Court by a simple letter complaining of a legal injury to the author or to some other person or group of persons, and the Court has treated such letter as a petition under Article 32 and entertained the proceeding without anything more. It is only comparatively recently that the Court has begun to call for the filing of a regular petition on the letter. I see grave danger inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. There is good reason for the insistence on a document being set out in a form, or accompanied by evidence, indicating that the allegations made in it are made with a sense of responsibility by a person who has taken due care and caution to verify those allegations before making them. A plaint instituting a suit is required by the Code of Civil Procedure to conclude with a clause verifying the pleadings contained in it. A petition or application filed in court is required to be supported on affidavit. These safeguards are necessary because the document, a plaint or petition or application, commences a course of litigation involving the expenditure of public time and public money, besides in appropriate cases involving the issue of summons or notice to the defendant or respondent to appear and contest the proceeding. Men are busy conducting the affairs of their daily lives, and no one occupied with the responsibilities and pressures of present day existence welcomes being summoned to a law court and involved in a litigation. A document making allegations without any proof whatever of responsibility can conceivably constitute an abuse of the process of law. There is good reason, I think, for maintaining the rule that, except in special circumstances, the document petitioning the court for relief should be supported by satisfactory verification. This requirement is all the greater where petitions are received by the Court through the post. It is never beyond the bound of possibility that an unverified communication received through the post by the court may in fact have been employed mala fide, as an instrument of coercion or blackmail or other oblique motive against a person named therein who holds a position of honour and respect in society. The Court must be ever vigilant against the abuse of its process. It cannot do that better in this matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegations be supplied. The requirement is imperative in private law litigation. Having regard to its nature and purpose, it is equally attracted to public interest litigation. While this Court has readily acted upon letters and telegrams in the past, there is need to insist now on an appropriate verification of the petition or other communication before acting on it. As I have observed earlier, there may be exceptional circumstances which may justify a waiver of the rule. For example, when the habeas corpus jurisdiction of the Court is invoked. For in all cases of illegal detention there is no doubt that the Court must act with speed and readiness. Or when the authorship of the communication is so impeccable and unquestionable that the authority of its contents may reasonably be accepted prima facie until rebutted. It will always be a matter for the court to decide, on what petition will it require verification and when will it waive the rule.

54. Besides this, there is another matter which, although on the surface appears to be of merely technical significance, merits more than passing attention. I think the time has come to state clearly that all communications and petitions invoking the jurisdiction of the Court must be addressed to the entire Court, that is to say, the Chief Justice and his companion Judges. No such communication or petition can properly be addressed to a particular Judge. When the jurisdiction of the Court is invoked, it is the jurisdiction of the entire court. Which Judge or Judges will hear the case is exclusively a matter concerning the internal regulation of the business of the Court, interference with which by a litigant or member of the public constitutes the grossest impropriety. It is well established that when a division of the Court hears and decides cases it is in law regarded as a hearing and a decision by the Court itself. The judgment pronounced and the decree or order made are acts of the Court, and accordingly they are respected, obeyed and enforced throughout the land. It is only right and proper that this should be known clearly to the lay public. Communications and petitions addressed to a particular Judge are improper and violate the institutional personality of the Court. They also embarrass the judge to whom they are personally addressed. The fundamental conception of the Court must be respected, that it is a single indivisible institution, of united purpose and existing solely for the high constitutional functions for which it has been created. The conception of the Court as a loose aggregate of individual Judges, to one or more of whom judicial access may be particularly had, undermines its very existence and endangers its proper and effective functioning.

55. I shall now turn to the character and incidents of the procedure open to the Court in public interest litigation and the nature of the power exercised by it during the proceeding. In public interest litigation, the role held by the Court is more assertive than in traditional actions. During the regime of the Warran Court in the United States, it proceeded to the point where affirmative programmes were envisaged, and the relationship between right and remedy was freed from the rigid intimacy which constitutes a fundamental feature of private law litigation. While remedial procedure was fashioned according to the demands of the case and varied from stage to stage, in the shaping of relief the court treated with the future and devised a code of regulatory action. Viewed in that context, the role of the Court is creative rather than passive, and it assumes a more positive attitude in determining facts.

56. Not infrequently public interest litigation affects the rights of persons not before the court, and in shaping the relief the court must invariably take into account its impact on those interests. Moreover, when its jurisdiction is invoked on behalf of a group, it is as well to remember that differences may exist in content and emphasis between the claims of different sections of the group. For all these reasons the court must exercise the greatest caution and adopt procedures ensuring sufficient notice to all interests likely to be affected. Moreover, the nature of the litigation sometimes involves the continued intervention of the court over a period of time, and the organising of the litigation to a satisfactory conclusion calls for judicial statesmanship, a close understanding of constitutional and legal values in the context of contemporary social forces, and a judicious mix of restraint and activism determined by the dictates of existing realities. Importantly, at the same time, the Court must never forget that its jurisdiction extends no farther than the legitimate limits of its constitutional powers, and avoid trespassing into political territory which under the Constitution has been appropriated to other organs of State. This last aspect of the matter calls for more detailed consideration, which will be attempted later.

57. The procedures adopted by the Court in cases of public interest litigation must be course be procedures designed and shaped by the Court with a view to resolving the problem presented before it and determining the nature and extent of relief accessible in the circumstances. On the considerations to which I have adverted earlier, the Court enjoys a degree of flexibility unknown to the trial of traditional private law litigation. But I think it necessary to emphasise that whatever the procedure adopted by the court it must be procedure known to judicial tenets and characteristic of a judicial proceeding. There are methods and avenues of procuring material available to executive and legislative agencies, and often employed by them for the efficient and effective discharge of the tasks before them. Not all those methods and avenues are available to the Court. The Court must ever remind itself that one of the indicia identifying it as a Court is the nature and character of the procedure adopted by it in determining a controversy. It is in that sense limited in the evolution of procedures pursued by it in the process of an adjudication, and in the grant and execution of the relief. Legal jurisprudence has in its historical development identified certain fundamental principles which form the essential constituents of judicial procedure. They are employed in every judicial proceeding, and constitute the basic infrastructure along whose channels flows the power of the Court in the process of adjudication.

58. What should be the conceivable framework of procedure in public interest litigation? This question does not admit of a clear-cut answer. As I have observed earlier, it is not possible to envisage a defined pattern of procedure applicable to all cases. Of necessity the pattern which the Court adopts will vary with the circumstances of each case. But it seems to me that one principle is clear. If there is a statute prescribing a judicial procedure governing the particular case the Court must follow such procedure. It is not open to the Court to bypass the statute and evolve a different procedure at variance with it. Where, however, the procedure prescribed by statute is incomplete or insufficient, it will be open to the Court to supplement it by evolving its own rules. Nonetheless, the supplementary procedure must conform at all stages to the principles of natural justice. There can be no deviation from the principles of natural justice and other well accepted procedural norms characteristic of a judicial proceeding. They constitute an entire code of general principles of procedure, tried and proven and hallowed by the sanctity of common and consistent acceptance during long years of the historical development of the law. The general principles of law, to which reference is made here, command the confidence, not merely of the Judge and the lawyer and the parties to the litigation, but supply that basic credibility to the judicial proceeding which strengthens public faith in the Rule of Law. They are rules rooted in reason and fairplay, and their governance guarantees a just disposition of the case. The court should be wary of suggestions favouring novel procedures in cases where accepted procedural rules will suffice.

59. Turning now to the nature and extent of the relief which can be contemplated in public interest litigation, we enter into an area at once delicate and sensitive and fraught with grave implications. Article 32 confers the widest amplitude of power, on this Court in the matter of granting relief. It has power to issue "directions or orders or writs", and there is no specific indication, no express language, limiting or circumscribing that power. Yet, the power is limited by its very nature, that it is judicial power. It is power which pertains to the judicial organ of the State, identified by the very nature of the judicial institution. There are certain fundamental constitutional concepts which, although elementary, need to be recalled at times. The Constitution envisages a broad division of the power of the State between the legislature, the executive and the judiciary. Although the division is not precisely demarcated, there is general acknowledgment of its limits. The limits can be gathered from the written text of the Constitution, from conventions and constitutional practice, and from an entire array of judicial decisions. The constitutional lawyer concedes a certain measure of overlapping in functional action among the three organs of the State. But there is no warrant for assuming a geometrical congruence. It is common place that while the legislature enacts the law, the executive implements it and the court interprets it and, in doing so, adjudicates on the validity of executive action and, under our Constitution, even judges the validity of the legislation itself. And yet it is well recognised that in a certain sphere the legislature is possessed of judicial power, the executive possessess a measure of both legislative and judicial functions, and the court, in its duty of interpreting the law, accomplishes in its perfected action a marginal degree of legislative exercise. Nonetheless, a fine and delicate balance is envisaged under our Constitution between these primary institutions of the State. In similar Constitutions elsewhere the courts have been anxious to maintain and preserve that balance. An example is provided by *Marbury v. Madison*. 5 U.S. (1 Cranch) 137 (1803). I do not mean to say that the Court should hesitate or falter or withdraw from the exercise of its jurisdiction. On the contrary, it must plainly do its duty under the Constitution. But I do say that in every case the Court should determine the true limits of its jurisdiction and, having done so, it should take care to remain within the restraints of its jurisdiction.

60. This aspect of Court action assumes especial significance in public interest litigation. In bears upon the legitimacy of the judicial institution, and that legitimacy is affected as much by the solution presented by the Court in resolving a controversy as by the manner in which the solution is reached. In an area of judicial functioning where judicial activism finds room for play, where constitutional adjudication can become an instrument of social policy forged by the personal political philosophy of the judge, this is an important consideration to keep in mind.

61. Where the Court embarks upon affirmative action in the attempt to remedy a constitutional imbalance within the social order few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility, in public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the Legislature or to the Executive Government. For in most cases the jurisdiction of the Court is invoked when a default occurs in executive administration, and sometimes where a void in community life remains unfilled by legislative action. The resulting public grievance finds expression through social action groups, which consider the Court an appropriate forum for removing the deficiencies. Indeed, the citizen seems to find it more convenient to apply to the Court for the vindication of constitutional rights than appeal to the executive or legislative organs of the state.

62. In the process of correcting executive error or removing legislative omission the Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one. An excessively political role identifiable with political governance betrays the Court into functions alien to its fundamental character, and tends to destroy the delicate balance envisaged in our constitutional system between its three basic institutions. The Judge, conceived in the true classical mould, is an impartial arbiter, beyond and above political bias and prejudice, functioning silently in accordance with the Constitution and his judicial conscience. Thus does he maintain the legitimacy of the institution he serves and honour the trust which his office has reposed in him.

63. The affirmative schemes framed in public interest litigation by the Court sometimes require detailed administration under constant judicial supervision over protracted periods. The lives of large sections of people, some of whom have had no voice in the decision, are shaped and ordered by mandatory Court action extending into the future. In that context, it is as well to remember that public approval and public consent assume material importance in its successful implementation. In contrast with policy making by legislation, where a large body of legislators debate on a proposed legislative enactment, no such visual impact can be perceived when judicial decrees are forged and fashioned by a few judicial personages in the confines of a Court. The mystique of the robe, at the stage of decision-making, is associated traditionally with cloistered secrecy and confidentiality and the end-result commonly issues as a final definitive act of the Court. It is a serious question whether in every case the same awesome respect and reverence will endure during different stages of affirmative action seeking to regulate the lives of large numbers of people, some of whom never participated in the judicial process.

64. There is good reason to suppose that treating with public interest litigation requires more than legal scholarship and a knowledge of textbook law. It is of the utmost importance in such cases that when formulating a scheme of action, the Court must have due regard to the particular circumstances of the case, to surrounding realities including the potential for successful implementation, and the likelihood and degree of response from the agencies on whom the implementation will depend. In most cases of public interest litigation, there will be neither precedent nor settled practice to add weight and force to the vitality of the Court's action. The example of similar cases in other countries can afford little support. The successful implementation of the orders of the Court will depend upon the particular social forces in the backdrop of local history, the prevailing economic pressures, the duration of the stages involved in the implementation, the momentum of success from stage to stage, and the acceptability of the Court's action at all times by those involved in or affected by it.

65. An activist Court, spearheading the movement for the development and extension of the citizen's constitutional rights, for the protection of individual liberty and for the strengthening of the socio-economic fabric in compliance with declared constitutional objectives, will need to move with a degree of judicial circumspection. In the centre of a social order changing with dynamic pace, the Court needs to balance the authority of the past with the urges of the future. As far back as 1939, Judge Learned Hand 52 Harvard Law Review 361 (1939) observed that a Judge "must preserve his authority by cloaking himself in the majesty of an overshadowing past; but he must discover some composition with the dominant needs of his times". In that task the Court must ever be conscious of the constitutional truism that it possesses the sanction of neither the sword nor the purse and that its strength lies basically in public confidence and support, and that consequently the legitimacy of its acts and decisions must remain beyond all doubt. Therefore, whatever the case before it, whatever the context of facts and legal rights, whatever the social and economic pressures of the times, whatever the personal philosophy of the Judge, let it not be forgotten that the essential identity of the institution, that it is a Court, must remain preserved so that every action of the Court is informed by the fundamental norms of law, and by the principles embodied in the Constitution and other sources of law. If its contribution to the jurisprudential ethos of society is to advance our constitutional objectives, it must function in accord with only those principles which enter into the composition of judicial action and give to it its essential quality. In his perceptive Lectures entitled "The Warren Court : Constitutional Decision as an Instrument of Reform", Harvard University Press (1968), p. 21. Professor Archibald Cox pointedly observes :

> "Ability to rationalise a constitutional judgment in terms of principles referable to accepted sources of law is an essential, major element of constitutional adjudication. It is one of the ultimate sources of the power of the Court-including the power to gain acceptance for the occasional great leaps forward which lack such justification. Constitutional government must operate by consent of the governed. Court decrees draw no authority from the participation of the people. Their power to command consent depends upon more than habit or even the deserved prestige of the justices. It comes, to an important degree, from the continuing force of the rule of law—from the belief that the major influence in judicial decisions is not fiat but principles which bind the judges as well as the litigants and which apply consistently among all men today, and also yesterday and tomorrow."

66. There is great merit in the Court proceeding to decide an issue on the basis of strict legal principles and avoiding carefully the influence of purely emotional appeal. For that alone gives the decision of the Court a direction which is certain, and unfaltering, and that especial permanence in legal jurisprudence which makes it a base for the next step forward in the further progress of the law. Indeed, both certainty of substance and certainty of direction are indispensable requirements in the development of the law, and invest it with the credibility which commands public confidence in its legitimacy.

67. This warning is of especial significance in these times, during a phase of judicial history when a few social action groups tend to show evidence of presuming that in every case the court must bend and mould its decision to popular notions of which way a case should be decided.

68. I have endeavoured by these observations to indicate some of the areas in which the Court should move with caution and circumspection when addressing itself to public interest litigation. As new areas open before the Court with modern developments in jurisprudence, in a world more sensitive to human rights as well as the impact of technological progress, the Court will become increasingly conscious of its expanding jurisdiction. That is inevitable. But its responsibilities are correspondingly great, and perhaps never greater than now. And we must remember that there is no higher Court to correct our errors, and that we wear the mantle of infallibility only because our decisions are final. That we sit at the apex of the judicial administration and our word, by constitutional mandate, is the law of the land can induce an unusual sense of power. It is a feeling we must guard against by constantly reminding ourselves that every decision must be guided by reason and by judicial principles.

69. My brothers have dealt with the preliminary objections raised by the respondents to the maintainability of this proceeding. On the considerations to which I have adverted earlier I have no hesitation in agreeing with them that the preliminary objections must be rejected. I have no doubt in my mind that persons in this country obliged to serve as bonded labour are entitled to invoke Article 23 of the Constitution. The provisions embodied in that clause form a vital constituent of the Fundamental Rights set forth in Part III of the Constitution, and their violation attracts properly the scope of Article 32 of the Constitution. I also find difficulty in upholding the objection by the respondents in regard to the admissibility and relevance of the material consisting of the report of the two advocates and of Dr. Patwardhan appointed as Commissioners. It is true that the reports of the said Commissioners have not been tested by cross-examination, but then the record does not show whether any attempt was made by the respondents to call them for cross-examination. The further question whether the appointment of the Commissioners falls within the terms of Order XLVI of the Supreme Court Rules 1966 is of technical significance only, because there was inherent power in the Court, in the particular circumstances of this case, to take that action. I have already set forth earlier my views in respect of the nature and forms of procedure open to the Court in public interest litigation and I need not elaborate them here. I may add, however, that the Court would do well to issue notice to the respondents, before appointing any Commissioner, in those cases where there is little apprehension of the disappearance of evidence.

70. On the merits of the case I find myself in agreement with my brother Bhagwati, both in regard to the operation of the various statutes as well as the directions proposed by him. The case is one of considerable importance to a section of our people, who pressed by the twin misfortunes of poverty and illiteracy, are compelled to a condition of life which long since should have passed into history. The continued existence of such pockets of oppression and misery do no justice to the promises and assurances extended by our Constitution to its citizens.

Amarendra Nath Sen, J.— The relevant facts have been fully set out in the judgment of my learned brother Bhagwati, J. My learned brother has also recorded in his judgment the various contentions which were urged before us in this writ petition.

72. A preliminary objection was raised by Shri K.L. Bhagat, Additional Solicitor General of India and also by Shri Phadke, learned counsel appearing on behalf of the respondents, as to the maintainability of the present petition. The objection to the maintainability of the present petition is taken mainly on the following three grounds :-

1. Art. 32 of the Constitution is not attracted to the instant case as no fundamental right of the petitioners or of the workmen referred to in the petition are infringed.
2. A letter addressed by a party to this Court cannot be treated as a writ petition and in the absence of any verified petition this Court cannot be moved to exercise its writ jurisdiction.
3. In a proceeding under Art. 32 of the Constitution this Court is not empowered to appoint any commission or an investigating body to enquire into the allegations made and make a report to this Court on the basis of the enquiry to enable this Court to exercise its power and jurisdiction under Art. 32 of the Constitution.

73. I propose to consider the objections in the order noted above. I shall first deal with the first objection, namely, that Art. 32 of the Constitution is not attracted as there is no violation of any fundamental right of the petitioner or of the workmen referred to in the petition.

74. The substance of the grievance of the petitioners in this petition is that the workmen referred to in the communication addressed to this Court are bonded labourers. In 1976, the Parliament enacted the Bonded Labour System (Abolition) Act, 1976 and by virtue of the provisions of the said Act, the bonded labour system has been declared to be illegal in this country. Any person who is wrongfully and illegally employed as a labourer in violation of the provisions of the Act, is in essence deprived of his liberty. A bonded labourer truly becomes a slave and the freedom of a bonded labourer in the matter of his employment and movement is more or less completely taken away and forced labour is thrust upon him. When any bonded labourer approaches this Court, the real grievance that he makes is that he should be freed from this bondage and he prays for being set at liberty and liberty is no doubt a fundamental right guaranteed to every person under the Constitution. There cannot be any manner of doubt that any person who is wrongfully and illegally detained and is deprived of his liberty can approach this Court under Art. 32 of the Constitution for his freedom from wrongful and illegal detention, and for being set at liberty. In my opinion, whenever any person is wrongfully and illegally deprived of his liberty, it is open to anybody who is interested in the person to move this Court under Art. 32 of the Constitution for his release. It may not very often be possible for the person who is deprived of his liberty to approach this Court, as by virtue of such illegal and wrongful detention, he may not be free and in a position to move this Court. The Petitioner in the instant case claims to be an association interested in the welfare of society and particularly of the weaker section. The Petitioner further states that the petitioner seeks to promote the welfare of the labourers and for promoting the welfare of labour, the petitioner seeks to move this Court for releasing the bonded labourers from their bondage and for restoring to them their freedom and other legitimate rights. The bonded labourers working in the far away places are generally poor and belong to the very weak section of the people. They are also not very literate and they may not be conscious of their own rights. Further, as they are kept in bondage their freedom is also restricted and they may not be in a position to approach this Court. Though no fundamental right of the petitioner may be said to be infringed, yet the petitioner who complains of the violation of the fundamental right of the workmen who have been wrongfully and illegally denied their freedom and deprived of their constitutional right must be held to be entitled to approach this Court on behalf of the bonded labourers for removing them from illegal bondage and deprivation of liberty. The *locus standi* of the petitioner to move this Court appear to be conclusively established by the decision of this Court in the case of *S.P. Gupta v Union of India & Anr.* (1981) Suppl. S.C.C. 87. Forced labour is constitutionally forbidden by Art. 23 of the Constitution. As in the present case the violation of the fundamental right of liberty of the workmen who are said to be kept in wrongful and illegal detention, employed in forced labour, is alleged, Art. 32 of the Constitution, to my mind, is clearly attracted. The first ground raised on behalf of the respondents cannot, therefore, be sustained.

75. Before I proceed to deal with the second ground urged on behalf of the respondents, it will be convenient to set out the provisions of Art. 32 of the Constitution. Art. 32 read as follows :-

> "(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
>
> (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrants and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.
>
> (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
>
> (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

76. Art. 32(1) confers the right to move this Court by appropriate proceedings for enforcement of the fundamental rights guaranteed under the Constitution. Art. 32(2) makes provision for the powers of this Court in the matter of granting relief in any proceeding in this Court for enforcement of the fundamental rights guaranteed by the Constitution. Art. 32(3) and 32(4) which I have also set out for the purpose of complete understanding of the provisions of Art. 32 for proper appriciation of its scope and effect, do not have any material bearing on the question involved in the present proceeding.

77. The second ground which raises the question whether the letter addressed by a party to this Court can be treated as a writ petition and in the absence of any verified petition this court can be moved to exercise its writ jurisdiction, is essentially an objection to the procedure to be adopted by this Court in the matter of entertaining a proceeding under Art. 32 for enforcement of fundamental rights of the parties. Art. 32(1) of the Constitution which has been earlier set out guarantees the right to move this Court by an appropriate proceeding for the enforcement of the fundamental rights. Art. 32(2) confers wide powers on this Court in the matter of granting relief against any violation of the fundamental rights. Art. 32 or for that matter any other article does not lay down any procedure which has to be followed to move this Court for relief against the violation of any fundamental rights. Art. 32(1) only lays down that the right to move this court by appropriate proceedings for enforcement of fundamental rights is guaranteed. The Constitution very appropriately leaves the question as to what will constitute an appropriate proceeding for the purpose of enforcement of fundamental rights to be determined by the Court. This Court, when sought to be moved under Art. 32 by any party for redressing his grievance against the violation of fundamental rights has to consider whether the procedure followed by the party is appropriate enough to entitle the court to proceed to act on the same. No doubt this Court has framed rules which are contained in part. IV, Order XXXV of the Supreme Court Rules under the Caption "application for enforcement of fundamental rights ("Art. 32 of the Constitution"). Generally speaking, any party who seeks to move this Court under Art. 32 of the Constitution should conform to the rules prescribed. The rules lay down the procedure which is normally to be followed in the matter of any application under Art. 32 of Constitution. These rules are rules relating to the procedure to be adopted and the rules are intended to serve as maids to the Deity of Justice. Procedural Law which also forms a part of the law and has to be observed, is, however, subservient to substantive law and the laws of procedure are prescribed for promoting and furthering the ends of justice. There cannot be any doubt that this Court should usually follow the procedure laid down in O. XXXV of the Rules of this Court and should normally insist on a petition properly verified by an affidavit to be filed to enable the Court to take necessary action on the same. Though this Court should normally insist on the rules of procedure being followed, it cannot be said, taking into consideration the nature of right conferred under Art. 32 to move this Court by an appropriate proceeding and the very wide powers conferred on this Court for granting relief in the case of violation of fundamental rights, that this court will have no jurisdiction to entertain any proceeding which may not be in conformity with procedure prescribed by the Rules of this Court. The Rules undoubtedly lay down the procedure which is normally to be followed for making an application under Art. 32 of the Constitution. They, however, do not and cannot have the effect of limiting the jurisdiction of this Court of entertaining a proceeding under Art. 32 of the Constitution, if made, only in the manner prescribed by the rules. For effectively safeguarding the fundamental rights guaranteed by the Constitution, the Court in appropriate cases in the interests of justice will certainly be competent to treat a proceeding, though not in conformity with the procedure prescribed by the Rules of this Court, as an appropriate proceeding under Art. 32 of the Constitution and to entertain the same. Fundamental rights guaranteed under the Constitution are indeed too sacred to be ignored or trifled with merely on the ground of technicality or any rule of procedure. It may further be noticed that the rules framed by this Court do not also lay down that this court can be moved under Art. 32 of the Constitution only in accordance with the procedure prescribed by the Rules and not otherwise. A mere technicality in the matter of form or procedure which may not in any way affect the substance of any proceeding should not stand in the way of the exercise of the very wide jurisdiction and powers conferred on this Court under Art. 32 of the Constitution for enforcement of fundamental rights guaranteed under the Constitution. Taking into consideration the substance of the matter and the nature of allegations made, it will essentially be a matter for the Court to decide whether the procedure adopted can be considered to be an appropriate proceeding within the ambi of Art. 32 of the Constitution. The Court, if satisfied on the materials placed in the form of a letter or other communication addressed to this court, may take notice of the same in appropriate cases. Experience shows that in many cases it may not be possible for the party concerned to file a regular writ petition in conformity with procedure laid down in the Rules of this Court. It further appears that this Court for quite some years now has in many cases proceeded to act on the basis of the letters addressed to it. A long standing practice of the Court in the matter of procedure also acquires sanctity. It may also be pointed out that in various cases the Court has refused to take any notice of letters or other kind of communications addressed to Court and in many cases also the court on being moved by a letter has directed a formal writ petition to be filed before it has decided to proceeded further in the matter. It is, however, eminently desirable, in my opinion, that normally the procedure prescribed in the rules of this Court should be followed while entertaining a petition under Art. 32 of the Constitution, though in exceptional cases and particularly in matter general public interest, this Court may, taking into consideration the peculiar facts and circumstances of the case, proceed to exercise its jurisdiction under Art. 32 of the constitution for enforcement of fundamental rights treating the letter or the communication in any other form as an appropriate proceeding under Art. 32 of the Constitution. It is, however, eminently desirable that any party who addresses a letter or any other communication to this Court seeking intervention of this Court on the basis of the said letter and communication should address this letter or communication to this Court and not to any individual Judge by name. Such communication should be addressed to the Chief Justice of the Court and his companion Justices. A private communication by a party to any Learned Judge over any matter is not proper and may create embarrassment for the Court and the Judge concerned.

78. In the present case, the unfortunate workers who are employed as bonded labourers at a distant place, could not possibly in view of their bondage, move this Court, following the procedure laid down in the Rules of this Court. The Petitioner which claims to be a Social Welfare Organisation interested in restoring liberty and dignity to these unfortunate bonded labourers should be considered competent to move this Court by a letter or like communication addressed to this Court, to avoid trouble and expenses, as the petitioner is not moving this Court for any personal or private benefit.

79. I shall now consider the third and the last objection which relates to the powers of this Court to direct an enquiry into the allegations made and to call for a report in a proceeding under Art. 32 of the Constitution to enable this Court to exercise its power and jurisdiction under Art. 32 of the Constitution.

80. We have earlier noted that the fundamental rights are guaranteed by the Constitution and for the enforcement of the fundamental rights very wide powers have been conferred on this Court. Before this court proceeds to exercise its powers under Art. 32 of the Constitution for enforcing the fundamental rights guaranteed, this Court has to be satisfied that there has been a violation of the fundamental rights. The fundamental rights may be alleged to have been violated under various circumstances. The facts circumstances differ from case to case. Whenever, however, there is an allegation of violation of fundamental rights, it becomes the responsibility and also the sacred duty of this Court to protect such fundamental rights guaranteed under the Constitution provided that this Court is satisfied that a case for interference by this Court appears prima facie to have been made out. Very often the violation of fundamental rights is not admitted or accepted. On a proper consideration of the materials the Court has to come to a conclusion whether there has been any violation of fundamental rights to enable the Court to grant appropriate reliefs in the matter. In various cases, because of the peculiar facts and circumstances of the case the party approaching this Court for enforcement of fundamental rights may not be in a position to furnish all relevant materials and necessary particulars. If, however, on a consideration of the materials placed, the Court is satisfied that a proper probe into the matter is necessary in the larger interest of administration of justice and for enforcement of fundamental rights guaranteed, the Court, in view of the obligations and duty cast upon it of preserving and protecting fundamental rights, may require better and further materials to enable the Court to take appropriate action; and there cannot be anything improper in the proper exercise of Court's jurisdiction under Art. 32 of the Constitution to try to secure the necessary materials through appropriate agency. The Commission that the Court may appoint or the investigation that the court may direct is essentially for the Court's satisfaction as to the correctness or otherwise of the allegation of violation of fundamental rights to enable the Court to decide the course to be adopted for doing proper justice to the parties in the matter of protection of their fundamental rights. We have to bear in mind that in this land of ours, there are persons without education, without means and without opportunities and they also are entitled to full protection of their rights or privileges which the Constitution affords. Living in chilled penury without necessary resources and very often not fully conscious of their rights guaranteed under the Constitution, a very large section of the people commonly termed as the weaker section live in this land. When this Court is approached on behalf of this class of people for enforcement of fundamental rights of which they have been deprived and which they are equally entitled to enjoy, it becomes the special responsibility of this Court to see that justice is not denied to them and the disadvantageous position in which they are placed, do not stand in the way of their getting justice from this Court. The power to appoint a commission or an investigating body for making enquiries in terms of directions given by the Court must be considered to be implied and inherent in the power that the Court has under Art. 32 for enforcement of the fundamental rights guaranteed under the Constitution. This is a power which is indeed incidental or ancillary to the power which the Court is called upon to exercise in a proceeding under Art. 32 of the Constitution. It is entirely in the discretion of the Court, depending on the facts and circumstances of any case, to consider whether any such power regarding investigation has to be exercised or not. The Commission that the Court appoints or the investigation that the Court directs while dealing with a proceeding under Art. 32 of the Constitution is not a commission or enquiry under the Code of Civil Procedure. Such power must necessarily be held to be implied within the very wide powers conferred on this Court under Art. 32 for enforcement of fundamental rights. I am, further of the opinion that for proper exercise of its powers under Art. 32 of the Constitution and for due discharge of the obligation and duty cast upon this Court in the matter of protection and enforcement of fundamental rights which the Constitution guarantees, it must be held that this Court has an inherent power to act in such a manner as will enable this Court to discharge its duties and obligations under Art. 32 of the Constitution properly and effectively in the larger interest of administration of justice, and for proper protection of constitutional safeguards. I am, therefore, of the opinion that this objection is devoid of any merit.

81. I may incidentally observe that as a result of such action on the part of the Court attention of the appropriate authorities concerned has in a number of cases been pointedly drawn to the existence of bonded labourers in various parts of the country and to their miserable plight and a large number of bonded labourers have been freed from their bondage. To my mind, the litigation of this type particularly in relation to bonded labourers is really not in nature an adersary litigation and it becomes the duty of the State and also of the appropriate authorities to offer its best co-operation to see that this evil practice which has been declared illegal is ended at the earliest. The existence of bonded labour in the country is an unfortunate fact. Whenever there is any allegation of the existence of bonded labour in any particular State, the State instead of seeking to come out with a case of denial of such existence on the basis of a feeling that the existence of bonded labour in the State may cast a slur or stigma on its administrative machinery, should cause effective enquiries to be made into the matter and if the matter is pending in this Court, should co-operative with this Court to see that death-knell is sounded on this illegal system which constitutes a veritable social menace and stands in the way of healthy development of the nation.

82. For reasons aforesaid, I do not find any merit in the preliminary objections raised and I agree with my learned brother that the preliminary objections must be over-ruled.

83. On the merits of the case my learned brother Bhagwati, J. has in his judgment carefully and elaborately discussed all the aspects. Apart from the principal grievance made that the workmen in the instant case are bonded labourers, various grievances on behalf of the workmen have been voiced and denial to the workmen of various other just rights has been alleged. The grievance of denial of other just rights to the workmen and the reliefs claimed for giving the workmen the benefits to which they may be entitled under various legislations enacted for their welfare are more or less in the nature of consequential reliefs incidental to the main relief of freedom from bonded and forced labour to which the workmen are subjected. I must frankly confess that in the facts and circumstances of this case I have some doubts as to the applicability of the provisions of Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The views expressed by my learned brother Bhagwati, J. in his judgment, to my mind,do not amount to any adjudication on the question of applicability of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The observations made by my learned brother Bhagwati, J. and the directions given by him on the various aspects with regard to the merits of the case after carefully considering the provisions of all the relevant labour legislations enacted for the benefit of labourers and for improvement and betterment of their lot, are for furthering the interests of the workmen and for proper protection and preservation of their just rights and to enable the appropriate authorities to take necessary action in the matter. As I am in agreement with the views expressed by my learned Brother Bhagwati, J. I do not propose to deal with these aspects at any length and I content myself by expressing my agreement with the judgment of my learned brother Bhagwati, J. on these matters.

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SCALE (PIL) 1981-97
SHRI SACHIDANAND PANDEY & ANR. *Appellants*
VS
THE STATE OF WEST BENGAL & ORS. *Respondents*

CORAM: O. CHINNAPPA REDDY AND V. KHALID, JJ.

PUBLIC INTEREST LITIGATION — ENVIRONMENT — ALLOTMENT — Allotment of land given to the Taj Group of Hotels for construction of a Five Star Hotel in the Begumbari property — Court dismissed the appeal in the given facts of the case.

Referred: Rohtas Industries Ltd. vs S.D. Agarwal [1969(3) SCR 108]; Barium Chemicals vs A.G. Rana [1972(2) SCR 752]; Mohinder Singh Gill vs Central Election Commission [1978(2) SCR 273]; Rash Bihari Panda vs State of Orissa [1969(3) SCR 374]; R.D. Shetty vs International Airport Authority [1979(3) SCR 1014]; Kasturi Lal Laxmi Reddy vs State of Jammu & Kashmir [1980(3) SCR 1338]; State of Haryana vs Jage Ram [1983(4) SCC 556 = 1983(2) SCALE 285]; Ram & Shyam Co. vs State of Haryana [1985(3) SCC 267 = 1985(1) SCALE 1237]; Chenchu Rami Reddy vs Government of Andhra Pradesh [1986(3) SCC 391 = 1986(1) SCALE 652].

Chinnappa Reddy, J.— We grant special leave and proceed to dispose of the appeal.

2. A hundred and thirty-two years ago, in 1854, 'the wise Indian Chief of Seattle' replied to the offer of 'the great White Chief in Washington' to buy their land. The reply is profound. It is beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. It is worth quoting. To abridge it or to quote extracts from it is to destroy its beauty. You cannot scratch a painting and not diminish its beauty. We will quote the whole of it:

> [1]"How can you buy or sell the sky, the warmth of the land? The idea is strange to us.
>
> If we do not own the freshness of the air and the sparkle of the water, how can you buy them?
>
> Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The sap which courses through the trees carries the memories of the red man.
>
> The white man's dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man-all belong to the same family.
>
> So when the Great Chief in Washington sends word that he wishes to buy our land, he asks much of us. The Great Chief sends words he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land,

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Judgment dated February 11, 1987 in C.A. No. 378 of 1987 (Arising out of Special Leave Petition (Civil) No. 13453 of 1986). [1987(1) SCALE 311]

[1] Reproduced verbatim from Pariyavaran Vol.I No. 1, June 1984.

But it will not be easy. For this land is sacred to us.

This shining water moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred, and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father.

The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land, you must remember, and teach your children, that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.

We know that the white man does not understand our ways. One portion of, land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy, and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care.

He kidnaps, the earth from his children. His father's grave and his children's birthright are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand. There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring, or the rustle of an insect's wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there to life if a man cannot hear the lonely cry of the whip-poorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the small of the wind itself, cleansed by a mid-day rain, or scented with the pinon pine.

The air is precious to the red man, for all things share the same breath-the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man dying for many days, he is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfather his first breath also receives the last sigh. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers.

So we will consider your offer to buy our land. If we decide to accept, I will make one condition. The White man must treat the beasts of this land as his brothers.

I am a savage and I do not understand any other way. I have seen a thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

> What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.
>
> You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth if sun mother. Whatever befalls the earth befalls the sons of the earth. If man spit upon the ground, they spit upon themselves.
>
> This we know: The earth does not belong to man; man belongs to the earth. This we know: All things are connected like the blood which unites one family. All things are connected. Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life: he is merely a strang in it. Whatever he does to the web he does to himself,
>
> Even the white man, whose God walks and talks with him as friend to friend, cannot be exempt from the common destiny. We may be brothers after all. We shall see. One thing we know, which the white man may one day discover - our God is the same God. You may think now that you own Him as you wish to own our land; but you cannot. He is the God of man, and His compassion is equal for the red man and the white. This earth is precious to Him, and to harm the earth is to heap contempt on its Creator. The white too shall pass; perhaps sooner than all other tribes. Contaminate your bed and you will one night suffocate in your own waste.
>
> But in your perishing you will shine brightly, fired by the strength of the God who brought you to this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the wild buffalo are all slaughtered, the wild horses are tamed, the secret corners of the forest heavy with scent of many men and the view of the ripe hills blotted by talking wires. Where is the thicket? Gone. Where is the eagle? Gone. The end of living and the beginning of survival."

3. Today society's interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity. Industrialisation, urbanisation, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he is also leaving behind deserts in the place of oases. In the last century, a great German materialist philosopher warned mankind: "Let us not, however, flatter ourselves ever much on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first". Ecologists are of the opinion that the most important ecological and social problem is the wide-spread disappearance all over the world of certain species of living organisms. Biologists forecast the extinction of animal plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2,000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1,000 birds and animal species are facing extinction at present. So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves.

4. In India, as elsewhere in the world, uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a Five Star Hotel at the expense of the zoological garden that it warrants interference by this Court? Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of *mala fides*. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art. 48A of the Constitution, the Directive Principle which enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country?, and Art. 51A (g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes and wild life, and to have compassion for living creatures". When the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel justified resigning itself to acceptance of the decision of the concerned authority. We may now proceed to examine the facts of the present case.

5. There is in Calcutta a zoological garden located in Alipore, now almost the heart of Calcutta, on either side of Belvedere Road, one of Calcutta's main arterial roads, fortynine acres on one side and eight acres on the other. The main zoo is in the fortynine acres block of land. There are some old buildings and vacant land in the eight acre plot of land. This eight acre plot of land is known as the Begumbari land. It is out of these eight acres that the land of the extent of four acres has been carved out and given to the Taj Group of Hotels for the construction of a Five Star Hotel. It is this giving away of land that was challenged before the High Court and is now challenged in this Court in this appeal by two citizens of Calcutta, one of them the Secretary of the Union of workmen of the zoological garden and the other a life member of the zoo, both of whom claiming to be lovers of wild life and well-wishers of the zoo.

6. In January 1979, the Director General of Tourism, Government of India, addressed a letter to the Chief Secretary, Government of West Bengal conveying the resolution of the Tourism Conference which was presided over by the Union Minister of Tourism and attended by several State Ministers and requesting that land in good locations may be made available for construction of the hotels in a drive to encourage tourism. In May, 1980 the Taj Group of Hotels came forward with a suggestion that they would be able to construct a Five Star Hotel if any of three properties on Chowringhee, specified by them, was available to them. The Government found that there was some litigation connected with the Chowringhee properties and, therefore, it would not be possible to convey the Chowringhee properties to the Taj Group of Hotels. On September 29, 1980 and November 29, 1980, there were two notes by the Secretary of the Metropolitan Development Department to the effect that I.T.D.C. was interested in a property known as the Hastings House Property and that the Taj Group of Hotels who considered the Hastings House property unsuitable may be offered four acres out of the eight acres of Begumbari land. On the same day the Taj Group of Hotels wrote to the Government of West Bengal stating that the proposed land could be seriously considered for construction of a hotel. Thereafter the Chief Minister along with the Minister of Tourism and the Minister for Metropolitan Development visited the site accompanied by the Director of the Zoo who apparently knew about the proposal right from the start. A note was then prepared by the Secretary, Metropolitan Development and put up to the Chief Minister for his approval. The note suggested that the Hastings House property may be offered to the I.T.D.C. and the Begumbari property may be offered to the Taj Group and that at a later stage a suitable Committee might be appointed to negotiate with the two group of hotels. The Chief Minister approved the proposal and required it to be placed before the Cabinet. On January 7, 1981 a memorandum was prepared for the consideration of the Cabinet explaining the need for more Five Star Hotels in Calcutta and the benefits flowing out of the construction and establishment of such Five Star hotels. It was suggested that the Hastings House Property may be leased to the I.T.D.C. Group and the Begumbari property to the Taj Group of Hotels. In regard to the Begumbari property, it was stated : "From the property of the Zoological Gardens on the Belvedere Road it is possible to carve out about four acres of land currently used for dumping garbage and also for growing grass for the elephants. It will be necessary and in any case advisable to shift the dumping ground, while adequate space can be made available for growing grass elsewhere in the same area." It was stated that the Finance and Tourism Departments had agreed to the proposal to lease the properties to the I.T.D.C. and the Taj Group respectively. It was stated that though the Forest Department had suggested that Salt Lake was a better place for

establishing a Five Star Hotel, there was no demand for a Five Star Hotel in that area and the request for a hotel in Salt Lake was confined to a Three Star Hotel. Cabinet approval was sought for the offers to be made to the I.T.D.C. and to the Taj Group and for the constitution a suitable Committee to undertake negotiations with the two groups.

7. On February 12, 1981, the Cabinet took a decision approving the proposal contained in the last paragraph of the Cabinet Memorandum, thus clearing the way for negotiations with the Taj Group.

8. Meanwhile, it appeared that the Public Undertakings Committee appointed by the West Bengal Legislative Assembly submitted a report on February 14, 1981 about the zoo in which they stated,

> ".......Originally this zoo was on the outskirts of the City but the City has grown in such a fashion that the zoo has virtually become the City Centre and there is hardly any scope for its expansion. The zoo is situated on the left bank of the Tolly's Nalla divided with two parts on either side of the Alipore Road. The zoo proper is about 40 acres on the Western side, while the eastern part comprises the Zoo Hospital, audiovisual centre aquarium, Zoo store and Staff quarters. The Committee was informed that now-a-days migratory birds were coming less in number though previously more foreign birds used to come here and in the opinion of the Managing Committee, the main reason for this was due to air and sound pollution. Breeding potentialities of animals and birds have been retarded due to constant stress and strain on the animals and also due to atmospheric reasons.... The Committee came to learn that a big hotel was proposed to be constructed on the plot of land where fodder for elephant are being grown to meet at least a portion of the elephants food. Moreover, the staff quarters, hospitals for animals and the morgue are also situated near the said plot of land. If the proposed hotel is set up, all the existing buildings, viz. hospital, morgue etc. would have to be shifted to the main Gardens resulting in unhealthy atmosphere for the zoo animals and also hampering the beauty of the zoo Gardens. This would also create problems to the staff quarters and aquarium."

The Committee also referred to a proposal to establish a 'Subsidiary Zoo some slight distance from Calcutta City and the request said to have been made for the allotment of 200 acres of land for that purpose. It was suggested that the Government may consider abandoning the proposal to set up a hotel on the Eastern side of the Zoo. The Chief Town Planner also visited the site at the request of the Secretary, Metropolitan Development Department. The inspection was made in the presence of the Director of the zoo. The Chief Town Planner thought that two to 2½ acres of land only might be made available for the hotel. He expressed the apprehension that if four acres of land to be given for construction of a hotel, then the entire hospital and the dumping ground would have to be removed and the southern boundary of the hotel would come very close to the residential block.

9. On March 19, the Taj Group submitted a proposal to the Government containing fairly detailed information about the tourism industry and its needs, the situation in Calcutta, the realities of hotel construction, the facts relating to what had been done in other cities, the benefits flowing out of the construction of hotels and their own proposals for constructing a hotel in the four acres of land in Belvedere Road. Two alternative financial arrangements were suggested. The first alternative was the payment of annual rent on the basis of the valuation of the land, the second alternative was based on the concept of nett sales, being defined as sales after deducting all taxes and levies and service charges. The Metropolitan Development Department expressed a preference for the second alternative and suggested the constitution of a Committee. The Finance Department also approved. The Taj Group was invited to send the financial projection on the basis of the second alternative. Correspondence went on. On June 5, 1981, a Committee of Secretaries was formally constituted.

10. In the meanwhile, WEBCON, a West Bengal Government Consultancy Undertaking, was asked to examine the proposals and to advise the Government. The WEBCON submitted its report on July 14, 1981 and on the request of the Committee of Secretaries a further report was submitted on July 22, 1981. The report of WEBCON is a comprehensive report on various topics connected with the establishment of Five Star Hotel in Calcutta. Among other things the report also suggested various financial alternatives and recommended the second alternative based on nett sales as the best. It is to be mentioned here that even by February 21, 1981 the proposal to lease out the Begumbari land to the Taj Group of Hotels had become public knowledge and news-papers carried reports on the same.

11. On June 9, 1981, the Secretary of the Animal Husbandry and Veterinary Services Department complained to the Secretary of the Metropolitan Development Department that they were not aware of the decision to lease the Begambari land. The Secretary, Metropolitan Development Department made an endorsement on the letter to the effect that the Minister for Animal Husbandry and Veterinary services had himself visited the site. In fact, as we have seen, the matter had been considered and approved by the Cabinet itself and all Departments must necessarily have been appraised of the proposal.

12. While so, the Managing Committee of the Zoo, on June 11, 1981, passed a resolution expressing itself against the proposal to construct a hotel on land belonging to the Zoo. The Resolution said,

> "The proposal for soil testing of zoo land in the Begumbari Compound for the purpose of construction of Five Star Hotel was discussed in the meeting. The Committee resolved that construction of a multistoried buildings in the near vicinity of the zoo will be highly detrimental to the animals of the zoo, its ecological balance and adversely affect the bird migration which is one of the greatest attractions of the zoo. The area proposed to the taken for Hotel construction is already used by the zoo for fodder cultivation, burial ground for dead animals hospital, operation theatre, quarantine area, seggregation wards, postmartem room and nursery both for zoo animals and horticultural section. These essential services cannot be accommodated within the campus of the main zoo for risk of spreading of infection to other animals of the zoo. Procurement of green fodder for the large number of harvivorous animals of the zoo is already a serious problem for the zoo and any disturbance to fodder cultivation will aggravate the situation. The Calcutta Zoo has the smallest area in comparison to other reputed Zoo. The Committee is of a opinion that no portion of Zoo land can be parted with

> for any other purpose. This being the position soil testing will hardly be of any avail as the Zoo cannot spare the land. Shri Ashoka Basu, M.L.A., Shri K.P. Banerjee and A.K. Das abstained from participation in the proceedings.”

The Minister for Metropolitan Development submitted a note to the Chief Minister on the resolution of the Managing Committee of the Zoo. He pointed out that even if four acres out of the eight acres of Begumbari land was given to the Taj Group, there would still remain sufficient land for accommodation of the facilities. He added that the Managing Committee’s resolution was not binding on the Government and suggested that the Director of the Zoo might be asked to allow the Taj Group to undertake soil testing etc. so that work may proceed according to the time-schedule. The Chief Minister endorsed the following:

> “I agree. It is unfortunate that we have not been able to accept the contentions of the Managing Committee. If further facilities are necessary for the Zoo, the Government will provide them.”

On June 25, 1981, the Managing Committee of the Zoo met again and passed another Resolution by which they withdrew their earlier objections. The Resolution stated,

> “In view of the letter issued to the Zoological Gardens, Alipore and the Cabinet decision regarding the land of Begumbari Compound and in consideration of the assurance conveyed through Shri Ashoka Basu, Chief Whip and Member that the State Government will give to the Garden adjacent lands and matching grants for the purposes of shifting of the Departments of the Zoo within the said compound, the members do not press their objections as contained in the resolution of the Managing Committee held on 11.6.81. This was passed by the majority of the members present, the President Justice Shri R.K. Banerjee dissenting.”

13. On June 29, 1981, the Director of the Zoo wrote to the Secretary of the Animal Husbandry and Veterinary Services Department stating his objections to the Proposal to lease the land for construction of a hotel. He stated,

> “It appears that a total of four acres of Begumbari land is proposed to be taken for hotel construction. It may be mentioned that this four acres of land proposed to be taken is the only area available there and it is presently covered by structures of hospital buildings, Research Laboratory, Operation Theatre, Segregation Wards, Quarantine areas, post-martem room, burial ground for dead animals. In addition there are flower nursery, dumping ground and fodder cultivation area. It is not at all possible to carve out from this four acres of land without disturbing these structures and services nor it is true that adequate space can be made available in this site for these essential services.
>
> It may also be stated in this connection that the Zoo cannot be run for a single day without these essential services, i.e. (i) burial ground for dead animals, a number of which die of infectious and communicable diseases, (2) quarantine area for keeping animals coming to the Zoo, at least for 15 days before being shifted to the Zoo proper, (3) isolation wards away from Zoo Hospital and quarantine area for treatment of animals suffering from infectious and contagious diseases, (4) postmartem room for carrying out p.m. findings, (5) dumping ground for dumping huge garbages coming out of the Zoo daily. (6) fodder cultivation area for growing fodder for the

harbivorous animals and (7) pathological laboratory for carrying pathological tests of animals and birds. "As per clause II of the Alipore Zoological Garden (Management) Rules, 1957, the disposal of properties and funds are vested in the Managing Committee of the Garden. The relevant clause of the rule reads as below: "The Managing Committee shall have custody and disposal of the property and funds of the Gardens and shall be responsible for proper maintenance."

14. Presumably as a consequence of the letter from the Director of the Zoo there was a note by the Secretary, Animal Husbandry and Veterinary Services Department suggesting the postponment of the implementation of the Cabinet till the necessary facilities then available at Begumbari land were shifted to other land of the same extent within a reasonable distance from the Zoological Garden, as these facilities were originally linked with the Zoo. He pointed out that the Metropolitan Development Department had not consulted the Animal Husbandry Department before the Cabinet note was prepared and circulated. So the practical problems of the Zoo did not receive detailed consideration earlier. The note also pointed out that immediate transfer of the four acre plot of land would mean discontinuance of existing hospital facilities, research laboratory, operation theatre, segregation wards, quarantine facilities etc. A reference was also made to the report of Public Undertakings Committee.

15. Meanwhile negotiations with Taj Group proceeded apace. The WEBCON submitted further reports. Taj Group suggested further modifications. On September 9, 1981 a detailed memorandum was prepared for cabinet discussion. Two alternative financial proposals were set out. A reference was made to the Committee of Secretaries who negotiated with the Taj Group of Hotels. Note was taken of the suggestion of the Negotiation Committee that the overall development plan for the environmental beautification, widening of approach roads, landscaping of Tolley's Nullah were responsibilities of the State Government and estimated to cost Rs. 2 crores but that it was expected to be of considerable public benefit. Stress was laid on the direct and indirect economic activities which would be generated by the establishment of a Five Star Hotel. Reference was also made to the report of WEBCON and it was noted that the projected profitability of the venture to the Government was expected to be high. It was also mentioned that the Ministers, Incharge of Tourism, Animal Husbandry, Land Revenue and Finance had seen the note and had agreed to it. On September 10, 1981 the Cabinet took the final decision to grant a ninety-nine years lease of the four acres of Begumbari land to the Taj Group of Hotels. On September 28, 1981 the Government of West Bengal officially conveyed its acceptance of the proposal of the Taj Group of Hotels for the construction of a Five Star Hotel. The terms and conditions of the lease were set out. On January 7, 1982, there was a joint meeting of the Establishment and Finance Sub-Committees of the Zoo and it was decided to recommend to the Committee of management that the demarcated area of four acres may be relinquished in favour of Animal Husbandry and Veterinary Services Department subject to the requirement that the Zoo will continue to get the services and facilities in the existing structures until they were reconstructed on the adjacent land. On January 11, 1982 the Managing Committee endorsed the view of the sub-committees and this was communicated to the Government. On January 11, 1982 the Managing Committee endorsed the view of the sub-committees and this was communicated to the Government. On January 15, 1982, the Government of West Bengal wrote to the Land Acquisition Officer, with copies to the Taj Group of Hotels, directing the Land Acquisition Officer to give possession of the land to the Taj Group of Hotels subject to their later executing a proper long term lease. It was mentioned in the letter that the construction of the hotel should not be started till the lease deed was executed and registered. It was further expressly stipulated as follows:-

> "The Alipur Zoological Garden will continue to get the services and facilities from the existing essential structures which fall within the demarcated in the annexed sketch map till such time when these essential structures i.e. hospital and operation theatre are reconstructed on the adjacent land occupied by the Zoological Garden. A copy of the sketch map is enclosed for ready reference. The Indian Hotels Co. Ltd. will find out in consultation with the concurrence of the Animal Husbandry and Veterinary Services Department of this Government and the authorities of the Alipore Zoological Garden the period of time required for reconstruction of the essential structures standing on the land proposed to be leased out to the said company. It will also let this department, have in consultation with the concurrence of the Animal Husbandry and Veterinary Services Department of this Government and the Alipore Zoological Garden a plan and estimate for reconstruction of the aforesaid essential structures on the land adjacent to the land proposed to be leased out, so that all these points are incorporated in the deed of lease between the said company and the State Government in this Department for the said land measuring four acres.
>
> "As agreed by the said company during the various meetings its representatives had with various departments of this Government, the company will either place the necessary fund in the hands of Animal Husbandry and Veterinary Services Department or the Zoo Garden authorities, as the case may be, for reconstruction of the aforesaid essential structures or reconstruct the aforesaid essential structures under its own supervision to the satisfaction of the Zoo Garden authorities or Animal Husbandry and Veterinary Services Department as the case may be, such funds will in either case be advanced or deemed to be advanced by the Company without interest to be adjusted against dues of the State Government in accordance with the terms and conditions of the lease."

16. It is to be noted here that though the stipulation was that the cost of new construction was to be initially met by Taj Group of Hotels and later to be adjusted against the rent payable by Taj Group. The Taj Group later agreed to waive such reimbursement. We are told that a total sum of Rs. 30 lakhs has now been spent by Taj Group of Hotels in connection with the reconstruction. We are also told that an extent of 288 square meters out of the plot given to the Taj Group was carved out and given back for accommodating part of the reconstructed structures. Pursuant to the letter dated January 15, 1982 possession was given to Taj Group on January 16, 1982. Thereafter an expert Committee was constituted to supervise the construction of alternative facilities. At that stage the writ petition out of which the present appeal arises was filed on February 26, 1982. Initially the relief sought was primarily to restrain the Zoo authorities from giving effect to the two resolutions dated January 7, 1982 and January 11, 1982 to hand over the four acres to the Animal Husbandry Department of the Government. Subsequent to the filing of the Writ Petition a lease deed was executed by the Taj Group of Hotels in favour of the Government. The Writ Petition was therefore, amended and a prayer for cancellation of the lease deed was added. First a learned Single Judge dismissed the Writ Petition. On appeal, a Division Bench of the High Court confirmed the judgment of the learned Single Judge. The original petitioner are now before us having obtained special leave under Art. 136 of the Constitution.

17. Before adverting to the submission of the learned counsel, it is necessary, at this juncture, to refer to certain correspondence. On April 23, 1982, Late Smt. Indira Gandhi, Prime Minister of India wrote to Shri Jyothi Basu, Chief Minister of West Bengal expressing the hope that he would not allow the Calcutta Zoo to suffer in any manner and would leave it intact. She drew the Chief Minister's attention to the fact that 'apart from reduction in the already inadequate space for the Zoological Garden construction of a Five Star Multy-storeyed Building would disturb the inmates and adversely affect bird migration which was a great attraction.' She also mentioned that the expert Committee of the Indian Board for Wild Life also unanimously disapproved the idea. She queried whether the Hotel could not be located elsewhere. For one reason or the other the Prime Minister's letter did not reach the Chief Minister for a considerable time. On August 21, 1982 the Chief Minister sent his reply pointing out that the four acres of land were agreed to be relinquished by the Committee of management of the Zoological Garden on condition that alternate arrangements were made for shifting the existing structures which were necessary for the Zoo from the plot in question to the adjacent plot. The Chief Minister also mentioned that there appeared to be some misconception that the plot in question was a part of the Zoo Garden. It was not so. It was outside the Zoological Garden and separate from it by a 80-100 feet road. The Chief Minister assured the Prime Minister that the existing structures would be relocated on the adjacent land and until that was done the Zoo would continue to get their services and facilities from the existing structures. The Chief Minister further drew the attention of the Prime Minister to the fact that the heel was likely to be a six storeyed one and would not be the only tall building near the Zoo. There were already a large number of high-rise residential buildings around the Zoo. No one had raised any objection when those buildings were constituted. Another multistoreyed building which was going to be the largest in the locality was under construction near the Zoo for the Post and Telegraph Department. There was no report that the existing multistoreyed buildings had any adverse affect on the migratory birds or the animals. The Chief Minister also pointed out that the lessee and their experts on wild life had assured them that in any case adequate precaution would be taken in regard to illumination of the hotel and the layout of the surroundings so that no disturbance would be caused to the flight path of the birds or animals. On August 30, 1982, Shri J.R.D. Tata wrote to the Prime Minister pointing out that their Hotel management had discussed the matter at length with representatives of the Wild Life Fund who were satisfied that the proposed hotel would cause no disturbance to the birds. He had again gone thoroughly into the project with special reference to its possible impact on the birds or environment and had also visited Calcutta in that connection. He was satisfied that the project could not possibly disturb birds using the lake or interfere with their free movement. He gave his reasons as follows:

> "The four-acre plot assigned to the Hotel Company by the State Government is not within the boundaries of the area belonging to the Zoological Gardens but on the other side of Belvedere Road, an important thoroughfare parallel to the main boundary of the zoo and some 700 feet from the main part of the lake. It forms part of an area belonging to the State Government which the Zoo authorities have upto now been allowed to use to look after sick animals of the Zoo and as labour quarters. It contains five small structures including a cage and a small veterinary laboratory or dispensary. The whole area is in shockingly unkept condition, most of it covered by a single or spear grass and other wild growth.
>
> "The hotel is planned to be built away from the frontage of that plot of Belvedere Road and to be low rise structure, the Highest point of which will not exceed 75 feet.
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> "Dr. B. Biswas, a renowned ornithologist who recently retired as Professor Emeritus of the Zoological Survey of India, whom the Taj Management consulted, confirmed that a 75-feet high building on the location would not worry birds landing on the lake or climbing out of it. In fact, as the grounds of the zoo between the lake and Belvedere Road are covered with high trees, the climbing or descent angle which the birds have to negotiate to get over the trees is already steeper that it will be between the lake and the proposed hotel.
>
> "As regards the objection that arise from the hotel itself from vehicular traffic to and from the hotel would disturb the birds, the heel will be totally airconditioned so that no noise will emanate from it, while noise from the heavy traffic on Belvedere Road does not seem to have bothered the birds upto now. The occasional additional cars plying into and out of the hotel could therefore hardly trouble birds resting on the lake some 250 yards away.
>
> "Regarding the fear that lights emanating from the hotel or Alluminate signs of the hotel would disemient the birds and possibly cause them to hit the building, the Management of the Hotel Company has taken a firm decision that there will be no bright lights or neon signs emanating from the hotel."

Shri Tata further suggested that if necessary the Prime Minister could appoint a small advisory Committee consisting of Shri Pushpa Kumar, Director of the Hyderabad Zoo considered to be the finest Zoo in India and one of the best in Asia, Dr. Biswas, Mrs. Anne Wright and the Chairman of the Managing Committee of the Zoological Graden to advise on the subject. On September 1, 1982, Smt. Indira Gandhi wrote to Mr. Tata expressing her happiness that the Hotel was not going to upset the Zoo animals and welcoming his offer to help the State Government to improve the Zoo's facilities.

18. Dr. L.M. Singhvi, learned counsel for the appellants made the following submissions before us : The Begumbari land was statutorily vested in the Managing Committee of the Zoological Garden and that the Committee could not be divested by an executive decision without proper procedure being followed. The land could not be leased to the Taj Group of Hotels without inviting tenders from willing persons and without complying with the requirements of paragraphs 166 and 167 of the Land Manual. In taking a decision to take away the land from the Zoo and to lease the same to the Taj Group of Hotels, relevant considerations had been ignored and irrelevant considerations had been taken into account. The decision was taken without considering the impact on the Zoo and without consulting various interested authorities and institutions. Several authorities and institutions like the Director of the Zoo, the Managing Committee of the Zoo, the Public Undertakings Committee of West Bengal, the Indian Wild Life Board, leading ornithologists of the country, etc. had disapproved the taking away of the land from the Zoo and leasing it to the Taj Group of Hotels. These persons and institutions had made several points, none of which had been taken into account by the Government before it took the decision to lease the land. The attention of the Government was not focussed on these questions as evident from the fact that the Cabinet Memorandum hardly refers to any of the objections. The decision of the Government was also wrong as it was apparently based on some assumptions which has been made without inquiry and verification. The Chief Minister appeared to be under the impression that Dr. Biswas and others were not opposed to the proposal. That was not correct. The construction of a Five-Star Hotel was too heavy a cost to pay for the environmental detriment caused by it. The terms on which the lease had been granted were detrimental to the public revenue.

19. Shri Dipankar Gupta, learned counsel for the Taj Group of Hotels and Shri Gooptu learned counsel for the State of West Bengal argued that the former facilities available in the four-acre plot of land were not displaced but were replaced and preserved by better facilities in the adjacent plot of land. This was not to the disadvantage, but to the advantage of the Zoo and its inmates. If the dumping ground and the burial ground had to be moved elsewhere, it was certainly more hygienic and a matter for gratification rather than for disgruntlement. Nor was there any obstruction to the flight of the visiting birds as the hotel was to be constructed at a distance of 700 feet from the lake and was to rise to a maximum height of 75 feet, being a medium rise and not a high rise building. On the other hand there was going to be an environmental improvement of the area as the dumping ground, burial ground and the semi dilapidated buildings were to be replaced by a hotel surrounded by broad roads and a very large number of trees proposed to be planted by the hotel management. The landscaping was also designed to improve the ecology and not to diminish it. There was no occasion for the Government to invite tenders since the establishment of a Five-Star Hotel was not something which could practicably be undertaken by anyone in that fashion. It could only be done by negotiation between the persons coming forward with proposals to establish Five Star Hotels. The terms of the lease were not to the financial disadvantage of the Government. The matter had been considered at great length by the Committees of Secretaries appointed by the Government as well as by WEBCON and they had recommended the acceptance the nettsales arrangement in preference to the arrangement of rent based on land-cost.

20. We are unable to agree with the submission of Dr. Singhvi, learned counsel for the appellants, that the Government of West Bengal decided to grant the lease of the Begumbari land to the Taj Group of Hotels without applying their mind to very important relevant considerations. Much of the argument on this question was based on the assumption that the decision to lease the Begumbari land to the Taj Group of Hotels was taken on February 12, 1981. The decision taken by the Cabinet on February 12, 1981 was merely to enter into negotiations with the I.T.D.C. and the Taj Group of Hotels in regard to leasing the Hastings House property and the Begumbari land. Negotiations with the I.T.D.C. did not fructify while negotiations with the Taj Group of Hotels fruitioned. It was on September 10, 1981 that the Cabinet finally took the decision to lease the Begumbari land to the Taj Group. If there was any decision on February 12, 1981 in regard to leasing the Begumbari land it could at best be characterised as purely tentative and it could not by any stretch of imagination be called an irrevocable or irreversible decision in the sense that the Government was powerless to revoke it or that it had created any rights in anyone so as to entitle that person to question any reversal of the tentative decision. It was not a decision, if it was one, on which any right could be hung. At that stage, the Government of West Bengal appeared to have been on the search for two suitable plots of land which could be offered, one to the I.T.D.C. and the other to the Taj Group of Hotels for the construction of Five-Star Hotels. The record shows that these two chain-hoteliers were the only hoteliers — and, they certainly were leading hoteliers of the country — who had come forward to negotiate with the West Bengal Government regarding the construction of Five-Star Hotels. The city of Calcutta was noticeably lacking in the 'Five-Star Hotel amenity' to attract tourists, local and foreign, and the Government of West Bengal was anxious to do its best to promote the tourist industry which it was hoped, would provide direct and indirect employment, earn foreign exchange and confer other economic benefits to the people of the State. It is immaterial whether the move came first from the Government or from the Taj Group. The Government was anxious that more Five-Star Hotels should be established at Calcutta and the Taj Group was willing to establish one. They wanted a suitable plot for its construction. It was the suggestion of the All India Tourism Conference presided over by the Union Minister for Tourism that State Governments should make plots in good locations available at concessional rates for construction of hotels in order to promote the Tourist Industry. It was in pursuance of this general All-India policy and, in particular, to fulfill the felt-needs of Calcutta that the Government of West Bengal was looking out for a suitable plot in a good location. They were clearly not doing so at the behest of the Taj Group of Hotels. It does not require much imagination to say that location is among the most important factors to be considered when constructing a Five-Star Hotel, particularly if it is to promote tourism. Obviously, one place is not as good as another and the place has to be carefully chosen. After excluding Salt Lake and after considering some properties in Chowringhee, the Government felt that two properties, the Hastings House property and the Begumbari property could be thought of as meeting the requirements. Since the Hastings House property was not found acceptable by the Taj Group, it was decided to negotiate with them in regard to construction of a Five-Star Hotel, in the Begumbari land. We find it difficult to treat this decision to negotiate with the Taj Group in regard to construction of a Five-Star Hotel on the Begumbari land as a final decision to part with the land. The prominent use to which the land was evidently put at that time was as a dumping ground for refuse and rubbish and for growing fodder for elephants. This was noticed and mentioned in the note prepared for the consideration of the Cabinet and it was suggested that separate provision would have to be made for them. Therefore, it is clear that it was not forgotten that if the land was to be allotted to the Taj Group, separate provision would have to be made for whatever, use the land was being put to them. The Government was not unmindful of the interests and requirements of the Zoological Garden though at that stage no detailed investigations had apparently been made. The decision of the Government was not one of those mysterious decisions taken in the shrouded secrecy of Ministerial Chambers. It appears to have been taken openly with no attempt at secrecy. The decision, perhaps proposal would be a more appropriate word, was known to the Public Undertakings Committee in less than two days. They expressly refer to it in their report dated February 14, 1981 made two days after the Cabinet decision. By twenty-first February it was public knowledge and news of the proposal was published in the daily newspapers. We have no evidence of any immediate or subsequent public protest but there were certain objections from some circles. Earlier we have extracted the report of Public Undertakings Committee. The substance of the objection of the Public Undertakings Committee was that the facilities available in the Begumbari land would be left unprovided for if the land was given to the proposed hotel. The available facilities were mentioned as Staff quarters, hospital for animals, burial ground for animals, fodder for elephants etc. It was also said that if the hospital and the burial ground were to be shifted to the main garden it would result in an unhealthy atmosphere for the animals and the zoo and would detract from the beauty of the Zoo Garden. The assumption of the Public Undertakings Committee that the hospital and the burial ground were to be shifted to the main garden was baseless. Since, there was never any such proposal. A modern zoo hospital for animals has been constructed in the remaining extent of Begumbari land replacing the old hospital which was housed in a semi-dilapidated building. Surely, there should be no complaint about it. It has also been proposed to shift the burial ground elsewhere. That would be most desirable from any point of view. Fodder for elephants should not again be considered to be a problem. It would be stretching credibility to suggest that it is necessary to grow fodder in the Begumbari land to feed the elephants in the Zoo. Fodder may be bought and brought from elsewhere. The Chief Town Planner who was deputed to visit the site at the request of the Secretary, Metropolitan Development Department and who visited the zoo accompanied by the Director of the Zoo reported that 2 to 2½ acres of land might be made available for the hotel. If four acres of land were given, he expressed the apprehension that the hospital and the dumping ground would have to be moved elsewhere. The hospital as we have already mentioned has since been conveniently and comfortably accommodated in a new building and the proposal is to move the dumping ground elsewhere. The Managing Committee of the Zoo also initially expressed its opposition to the proposal to construct a hotel on land belonging to the Zoo. The Committee's objections were two-fold: (1) A multi-storied building in the vicinity of the Zoo will disturb the animals and the ecological balance and will affect the bird migration (2) the land was already used for various purposes, that is, fodder cultivation, burial ground for animals, hospital, operation theatre, quarantine area, postmartem room and nursery. It would be impossible, according to the Committee to accommodate these essential services within the campus of the main Zoo. The objections of the Managing Committee were first brought to the notice of the Minister for Metro-politan Development who submitted a note to the Chief Minister pointing out that even if four acres of land out of the eight acres of Begumbari land was given to the Taj Group, there would still remain sufficient land for accommodating the existing facilities. The Chief Minister considered the objections and noted that if further facilities were necessary for the Zoo, Government would provide them. Thereafter the Managing Committee reversed its earlier stand and agreed to the proposal on the assurance that adjacent land and matching grants would be given to the Zoo. We have earlier referred to the letter of the Director of the Zoo dated June 29, 1981 addressed to the Secretary, Animal Husbandry Department where he expressed his opposition to the proposal on the ground that the Zoo could not be run for a single day without the essential services which were being provided in the four acres of land proposed to be given for the hotel. This again, we notice, is based on the assumption that there was going to be no provision for those facilities once the hotel was constructed. We have already pointed out that this assumption is wholly incorrect. The letter of the Director of the Zoo was followed by a note by the Secretary of the Animal Husbandry Department suggesting that the practical problems of the Zoo should receive detailed consideration and that the immediate transfer of the land to the hotel would mean discontinuance of the existing facilities. In the face of all this material, we do not see how it can be seriously contended that the interests and the requirements of the Zoo were totally ignored and not kept in mind when the decision was taken to lease the land to the Taj Group of Hotels. The Chief Minister's attention was expressly drawn to the Managing Committee's first Resolution expressing its opposition to the proposal to give the land for the construction of a hotel and detailing the objections and the Chief Minister had expressly noted that all facilities necessary for the Zoo would be provided by the Government. The assurance was also conveyed to the Managing Committee through the emissaries of the Chief Minister. There were inter-departmental noting which we presume must also have been brought to the notice of the Chief Minister. We find it impossible to agree with the stricture that the Chief Minister turned a blind eye and a deaf ear to the interests and the requirements of the Zoo and went about the question of allotment of land to the Taj Group of Hotels determined to give the land to them and with a mind closed to everything else. We cannot do so in the face of the assurance of the Chief Minister that facilities would be provided for the Zoo and if, as the saying goes, the proof of the pudding is in the eating, the Chief Minister's assurances are found reflected in the lease executed by the Taj Group of Hotels in favour of the Government of West Bengal. In Clause 25 of the lease deed, it is expressly stipulated that the lessee shall reconstruct the structures now existing on the demised land (as found in the sketch accompanying the deed) on the adjacent plot of land and that the plan, design, lay out, estimates, etc. of the proposed new structures should be supplied by the Alipur Zoological Garden to the lessee. The reconstructed structures were required to be equal to the existing ones in floor area, but it was open to them to increase the floor area by agreement. The amount expended by the lessee towards the reconstruction of the structures was to be adjusted without interest against the dues of the lessee to the Government. The Alipore Zoological Garden authorities were required to vacate the existing structure within a period of six months which was also the period stipulated for raising the new constructions. We may add here that the Taj Group of Hotels have spent a sum of Rs. 30 lakhs towards the cost of the new constructions, but that they have waived their right to claim reimbursement from the Government. An affidavit to that effect was also filed before the trial court. Thus we see that the contention of the appellants that the Government of West Bengal had no thought to spare for the facilities which were till then being provided in the Begumbari land is unsustainable. The learned counsel for the appellants urged that the second Cabinet Memorandum dated September 9, 1981 on which date the Government took the final decision to grant the lease made no mention of the needs and interests of the Zoo or the facilities provided in the Begumbari land for the Zoo. It is true that there is no reference to these matters in the second Cabinet Memorandum. But that is for the obvious reason that the matter had already been the subject matter of inter-departmental discussion and communication. The Managing Committee of the Zoo which had initially opposed the proposal had also come round and had agreed to the proposal. It was, therefore, thought that there was no need to mention the needs and interests of the Zoo which were already well known and had also received consideration.

21. It was suggested that the Zoo itself required to be expanded and there was, therefore, no land which could be spared. The land allotted to the hotel was, as we have seen, not used for the main purpose of the zoo and was not in fact part of the main Zoological Garden. The Government had already in mind a proposal to start a subsidiary Zoo in an extent of about 200 acres of land in the outskirts of Calcutta. This has been mentioned in the various notings made from time to time. We have no doubt that the Government was quite alive to the need for expansion of the zoo when they decided to grant four acres of the Begumbari land which was not used for the main purpose of the zoo for the construction of a Five-Star Hotel.

22. The next question is whether the Government was alive to the ecological considerations, particularly to the question of the migratory birds when they took the decision to lease the land to the Taj Group of Hotels. Again sustenance to the argument of the learned counsel for the appellants is sought to be drawn from the circumstance that neither of the two Cabinet Memoranda dated January 7, 1981 and September 9, 1981 referred to the migratory birds. It is wrong to think that everything that is not mentioned in the Cabinet Memoranda did not receive consideration by the Government. We must remember that the process of choosing and allotting the land to the Taj Group of Hotels took nearly two years, during the course of which objections of various kinds were raised from time to time. It was not necessary that every one of these objections should have been mentioned and considered in each of the Cabinet Memoranda. The question of the migratory birds was first raised in the resolution of the Managing Committee dated June 11, 1981. This resolution was forwarded to the Chief Minister and considered by him as evident from the note of the Chief Minister and the subsequent reversal of the Managing Committee's resolution at the instance of the Chief

Minister and on his assurances. The Chief Minister was certainly aware of the question of the migratory birds before it was finally decided to allot the Begumbari land to the Taj Group of Hotels. That the Government was aware of the dissension based on the alleged obstruction likely to be caused by a multi-storeyed building to the flight of the migratory birds appears from the letter of the Chief Minister to the Prime Minister. In this letter, the Chief Minister pointed out that there were already in existence a number of multi-storeyed buildings all around the Zoological Garden, but there was no report that they had any adverse effect on the migratory birds or the animals. He also pointed out that all precautions would be taken in the matter of illumination of the hotel and lay out of the surroundings so that no disturbance would be caused to the flight path of the birds or animals. Shri J.R.D. Tata, on behalf of the Taj Group of Hotels, also wrote to the Prime Minister assuring her that the hotel management had discussed the matter at length with a representative of the Wild Life Fund who, after discussion, had been satisfied that the proposed hotel would cause no disturbance to the birds. He further assured her that he had himself gone thoroughly into the project with special reference to the possible impact on the birds and the environment and had satisfied himself that project would not cause any disturbance to the birds or their free movement. The reasons given by him have already been extracted earlier by us from his letter. He pointed out that the four-acre plot was not within the main Zoological Garden, but was separated from it by the Belvedere Road which was an important thoroughfare in the city. It was about 700 feet from the main part of the lake. The hotel was proposed to be built away from the frontage of the plot in Belvedere Road and was to be a low-rise structure, the highest point of which would not exceed 75 feet. This was mentioned apparently to indicate that the building would not come within the trajectory of the birds. He mentioned that Dr. Biswas, a renowned ornithologist had also been consulted by the Taj Management and he had also confirmed that a 75 feet building would not interfere with the landing or climbing out of the birds from the lake. He further mentioned that the grounds of the Zoo between the lake and the Belvedere Road were covered with tall trees and that the birds negotiating the trees would have to fly at a steeper angle than it would be necessary to negotiate the proposed hotel. The vehicular traffic on Belvedere Road which was also heavy did not bother the birds and the slight increase of the vehicular traffic consequent on the construction of the hotel was also not likely to bother them either. It was also pointed out that particular care would be taken in the matter of illumination of the hotel so that bright lights or neon signs emanating from the hotel would not disturb the birds and animals.

23. The learned counsel for the appellants drew our attention to letter written by Dr. Biswas to the Statesman dated August 3, 1982 in which he disowned having made any statement to a press correspondent by name, Bachi J. Karkaria that the hotel posed no threat at all to the migratory flight path. He explained that what he meant to say was that migratory birds visiting the Zoo lake choose places to the east and south-east of the lake for nocturnal feeding and that their flight to the nocturnal feeding grounds in the marshes would be affected, if the proposed hotel was a high-rise building. Apart from the fact that he did not mention what he had in mind when he spoke of a high-rise building, the point made by Shri J.R.D. Tata in his letter to the Prime Minister that birds flying in or flying out had to fly at a very steep angle while negotiating the tall trees between the lake and Belvedere Road, an angle much steeper than the angle at which they would have to fly to negotiate a 75 feet tall building, such as, the proposed hotel, remains unanswered. Be it noted that Belvedere Road is to the east of the lake. We may also note here a point made by Dr. Biswas in his letter to the Statesman that there were possible health hazards in the re-location of the Zoo hospital, quarantine area and post-mortem room in the area adjacent to the staff quarters. He is no expert on the subject of public health and no one has complained that there would be any hazard to the health of those living in the staff quarters by the re-location of the hospital, etc. We are satisfied that the question of obstruction which may be caused to migratory birds did not go unnoticed by the Government before the decision to lease the land was taken and we are also satisfied that the building of the proposed hotel is not likely to cause any obstruction to the flight path of the migratory birds.

24. We may refer here to the resolution of the Wild Life Board to which a reference was made by the Prime Minister in her letter to the Chief Minister. Our attention was drawn by the learned counsel for appellants to the presence of two renowned experts at the meeting of the Wild Life Fund on September 25, 1981. They were Shri Pushp Kumar, Director of the Hyderabad Zoo and Mrs. Anne Wright. The subject which was discussed by the Expert Committee on September 25, 1981 was "Construction of a Five Star Hotel within the premises of Alipore Zoo in Calcutta". The proceedings of the Committee were recorded as follows:

> "Director, Geographical Survey of India explained the whole matter and pointed out the utter impropriety of the decision of the Government of West Bengal to construct a Five-Star Hotel within the premises of Alipore Zoo in Calcutta. The Committee agreed fully with this view and desired that this matter should be taken up immediately by the Central Government with the State Government."

This record of the proceedings shows that the Experts Committee of the Wild Life Fund was proceeding on the fundamental wrong assumption that the hotel was proposed to be constructed "within the premises of Alipore Zoo". The resolution was justified on the assumed premises, but unfortunately it was founded on a wrong premises. Later Mrs. Anne Wright appeared to be satisfied with what was finally done as evident from her letter dated November 19, 1983 to Mr. J.R.D. Tata, a copy of which has been placed before us.

25. Bearing in mind the proper approach that we have to make when questions of ecology and environment are raised, an approach which we have mentioned at the outset, we are satisfied that the facts and circumstances brought out by the appellants do not justify an inference that the construction of the proposed hotel in the Begumbari land would interfere in any manner with the animals in the Zoo and the birds arriving at the Zoo or otherwise disturb the ecology:

The proposed hotel is a Garden hotel and there is perhaps every chance of the ecology and environment improving as a result of planting numerous trees all around the proposed hotel and the removal of the burial ground and dumping ground for rubbish.

26. Dr. Singhvi cited before us the well known decisions of this Court in *Rohtas Industries Ltd. v S.D. Agarwal*, 1969(3) SCR 108, *Barium Chemicals v A.G. Rana*, 1972(2) SCR 752 and *Mohinder Singh Gill* *v Central Election Commission*, 1978(2) SCR 273, to urge that even an administrative decision must be arrived at after taking into account all relevant considerations and eschewing irrelevant considerations and that the reasons for an order must find a place in the order itself and those reasons cannot be supplemented later by fresh reasons in the shape of an affidavit or otherwise. The submission was that neither the Cabinet memorandum of January 7, 1981 nor the Cabinet Memorandum of September 9, 1981 revealed that relevant considerations had been taken into account. What was not said in either of the Cabinet Memoranda, it was said, could not later be supplemented by considerations which were never present to the mind of the decision making authority. We do not agree with the submission of Dr. Singhvi. The proposition that a decision must be arrived at after taking into account all relevant considerations, eschewing all irrelevant considerations cannot for a moment be doubted. We have already pointed out that relevant considerations were not ignored and, indeed, were taken into account by the Government of West Bengal. It is not one of those cases where the evidence is first gathered and a decision is later arrived at one fine morning and the decision is incorporated in a reasoned order. This is a case where discussions have necessarily to stretch over a long period of time. Several factors have to be independently and separately weighed and considered. This is a case where the decision and the reasons for the decision can only be gathered by looking at the entire course of events and circumstances stretching over the period from the invitation of the proposal to the taking of the final decision. It is important to note that unlike Mohinder Singh Gill's case where the Court was dealing with a Statutory Order made by a statutory functionary who could not therefore, be allowed to supplement the grounds of this order by later explanations, the present is a case where neither a statutory function nor a statutory functionary is involved but the transaction bears a commercial though public character which can only be settled after protracted discussion, clarification and consultation with all interested persons. The principle of Mohinder Singh Gill's case has no application to the factual situation here.

27. It was said that the principles of Natural Justice had not been observed and that those who are most interested in the Zoological Garden were not heard in the matter before the decision was taken. We do not think that anyone can have a justifiable grievance on this score. The proposal to lease the Begumbari land was public knowledge as we have seen. Such as those as were really interested in the matter like the Managing Committee of the Zoological Garden and the Director of the Zoo did have their say in the matter. The Public Undertakings Committee in its report discussed the matter and invited the Government's attention to various factors. The matter was further discussed on the floor of the Legislative Assembly. It is impossible to agree with the submission that there was any failure to observe principles of Natural Justice.

28. One of the submissions of Dr. Singhvi, learned counsel for the appellants, was that the Bengal Public Parks Act, 1904 vested the Begumbari land in the Managing Committee of the Zoological Garden and that what had become statutorily vested in the Committee could not be divested by an executive flat. We agree that an Act of the Legislature cannot be undone by a mere act of the executive. But what is the position here? Did the Act deal with the land at all? The Begumbari land was given to the Zoological Garden by the Government in

1880. We do not have the original grant before us. The entire file of the Government relating to the Begumbari land was produced before the Trial Court without any attempt at withholding any document. There were before the High Court and there are now before us two copies of a letter written on July 7, 1980 by the Assistant Secretary to the Government of Bengal in the Public Works Department to Mr. L. Schwandler, Honorary Secretary, Zoological Garden conveying to him the sanction of the Lt. Governor for the transfer of the land to the east of Belvedere Road, known as Begumbari land to the charge of the committee of the Zoological Garden on the terms agreed to by the Committee in their letter dated April 23rd. The conditions were mentioned as:

> "1st. That the land is to be used for the purpose of acclimatization only.
> 2nd. That Carnivors are not to be kept on any part of it, on any account.
> 3rd. That the grounds are to be kept clear and neat.
> 4th. That the land must be restored to the Government if hereafter required. The Zoological Garden Committee being reimbursed for any expenditure they may have incurred in building there."

Dr. Singhvi questioned the authenticity of the documents and also objected to their reception in evidence on the ground that no foundation had been laid for the reception of secondary evidence. We must straightaway say that no objection was taken either before the single judge or before the Division Bench either to the authenticity or to the admissibility of the documents. We do not for a moment doubt the genuineness of the two documents which have been produced from old official records. What is important is that the Managing Committee of the Zoological Garden never doubted the authenticity of the documents nor was any question ever raised to suggest that the terms of the grant were other than those mentioned in the letters. We are satisfied that for the purpose of the present case, we will be justified in proceeding on the basis that the land which was undoubtedly Government land, to start with, was given to the Zoological Garden upon the terms set out in the two letters. One of the terms was that the land should be restored to the Government whenever required. Another term was that the Zoological Garden Committee would be suitably compensated for any expenditure incurred by it on the construction of any building on the land.

29. The further submission of Dr. Singhvi was that whatever might have been the terms of the grant in favour of the Zoological Garden, the Bengal Parks Act, 1904, vested the land in favour of the Zoological Garden and there was no way by which the Government could divest the Zoological Garden of the land except by a procedure known to the law such as acquisition or requisition. We are unable to find any substance in the argument. The Bengal Parks Act, 1904 was enacted "to protect public parks and gardens in Bengal from injury and to secure the public from molestation and annoyance while resorting to such park and gardens." The Act was made applicable to the public park and gardens mentioned in the schedule. The Zoological Garden, Alipore was one such park. Section 3 enables the State Government, by notification in the official Gazette "to declare that any specified land, bridge or pontoon shall, for the purposes of this Act, be deemed to be included in any park." Section 4 enables the Government to make rules for the management, and preservation of any park, and for regulating the use thereof by the public. In particular, the rules may regulate the admission into the park of persons, animals and vehicles, prohibit the causing of any manner of injury to the trees, plants, monuments, furniture etc. in the park, prohibit shooting, bird-hesting etc., prohibit or regulate fishing or beating, prohibit bathing, or the pollution of water by any other means, prohibit the graxing of horses or ponies, prohibit the teasing or annoying of animals or birds kept in the park, prohibit the commission of any nuisance, or the molestation or annoyance of any person resorting to the park etc. etc. From the Preamble and the provisions of the Act, it is clear that the Act is intended to protect the inmates and the property of the park from injury by persons resorting to the park and to protect persons resorting to the park from molestation or annoyance by others. The Act is aimed at protecting the park and its visitors from injury and annoyance by despoilers and marauders. The Act has nothing whatever to do with the vesting of any property in the parks. There is infact no provision which deals with the vesting of property in a park. Section 3 enables the State Government to extend by a notification the boundaries of a park but that can only be for the purposes of the Act and not for the purpose of vesting or creating any title in a property. If a piece of adjacent land for example, is taken on lease for a specified number of years by the park and included in the park by a notification under sec. 3, it does not mean that the land has become the property of the park; it only means that the various things, the doing of which is regulated or prohibited by the Act and the rules will not be done or will be regulated on the adjacent land also. We do not think that the provisions of the Bengal Public Parks Act have any relevance to the question of the power of the Government to transfer the Begumbari land to the Taj Group of Hotels.

30. One of the arguments strenuously pressed by Dr. Singhvi was that, even if it was assumed that the Government had the power to transfer the land, the Government did not have the power to deal with the land in any manner that they liked. Certain norms and procedures had to be observed and nothing could be done which would result in loss to the public exchequer. The Bengal Land Manual prescribed the procedure to be followed in the matter of transferring land belonging to the Government. That procedure had to be observed. In any case, it was necessary either to hold a public auction or to invite tenders at least from the limited class of persons interested in utilising the land for the purpose for which the land was proposed to be transferred. The learned counsel invited our attention to several decisions of the court: *Rash Bihari Panda vs State of Orissa*, 1969(3) SCR 374., *R.D. Shetty vs International Airport Authority*, 1979(3) SCR 1014., *Kasturi Lal Laxmi Reddy vs State of Jammu & Kashmir*, 1980(3) SCR 1338., *State of Haryana vs Jage Ram* 1983(4) SCC 556, *Ram & Shyam Co. vs State of Haryana*, 1985(3) SCC 267 and *Chenchu Rami Reddy vs Government of Andhra Pradesh* 1986(3) SCC 391.

31. The West Bengal Land Management Manual, 1977 is published under the authority of the Board of Revenue, West Bengal. Like similar volumes going by whatever name, published by the Boards of Revenue of other States, the West Bengal Land Management Manual also is a compendium of (1) statutes and rules framed either by the Government or by the Board of Revenue pursuant to a statutory power conferred on them; (2) Orders issued by the Government from time to time; and (3) Orders, circulars, instructions and memoranda issued by the Board of Revenue from time to time. All these are arranged in such a manner that reference to them by the officials of the Revenue hierarchy is easy. Statutes and statutory orders have, no doubt, to be obeyed. It does not mean that orders, instructions, etc. may be departed from in an individual case, if applicable to the facts. They are not to be ignored until amended. The Government or the Board may have the power to amend these orders and instructions, but nonetheless they must be obeyed so long as they are in force and are applicable.

32. The appellants invited our attention to paragraphs 165, 166 and 167 of the Land Management Manual and urged that the rules laid down by the provisions have been ignored by the Government of West Bengal. These provisions of the Land Management Manual do not appear to have anything to do with the transfer and use of the land in the manner proposed, in which the State also has a vital stake apart from the mere raising of revenue for the State. Paragraphs 165, 166 and 167 deal with simple cases of creation of non-agricultural tenancies by way of long term leases. They generally deal with land which is at the disposal of the Government as waste or surplus land and are intended to secure the best revenue for the State. They do not deal with cases of transfer of land for a specific socio-economic object, where, the securing of immediate revenue is not the principal object but other social and economic benefits are sought.

33. In pursuing the socio-economic objective is the State bound to invite tenders or hold a public auction? To answer this question, we may refer to the cases cited at the Bar.

34. In *Rash Bihari Panda vs State of Orissa,* (supra) the Government offered the option to purchase Kendu leaves to certain old contractors on the same terms as in the previous year. Realising that the scheme of offering to renew contracts with the old licenses on the same terms was open to objection, the Government changed its policy and formulated a new scheme by which offers were invited from intending purchasers of Kendu leaves but the invitation was restricted to those individuals who had carried out the contracts in the previous year without default and to the satisfaction of the Government. The Court held that the right to make offers being open to a limited class of persons, it effectively shut out all other persons carrying on trade in Kendu leaves and also new contracts into that business. It was, therefore, ex-facie discriminatory and imposed unreasonable restrictions upon the right of persons other than existing contractors to carry on business. It is to be seen that in the present case no one has come forward alleging that he has been discriminated against and his fundamental right to carry on business had been effected. The very nature of the construction and establishment of a Five Star Hotel is indicative of a requirement of expertise and sound financial position on the part of those who might offer to construct and establish them. The decision taken by the All-India Tourism Council was an open decision well-known to everyone in the hotel business. Yet no one except the I.T.D.C. and the Taj Group of Hotels had come forward with any proposal. We have it in the record that the Oberoi Group of Hotels already had a Five Star Hotel in Calcutta while the Welcome Group of Hotels were making their own Private negotiations and arrangements for establishing a Five Star Hotel. In the circumstances, particularly in the absence of any leading hoteliors coming forward, the Government of West Bengal was perfectly justified in entering into negotiation with the I.T.D.C. and the Taj Group of Hotels instead of inviting tenders.

35. In *R.D. Shetty vs International Airport Authority* (supra), Bhagwati, J. speaking for the Court observed that the activities of the Government had a public element and if it entered into any contract, it must do so fairly without discrimination and without unfair procedure. Whenever the Government dealt with the public, whether by way of giving jobs or entering into contracts on issuing quotas or licenses or granting other forms of largess, the Government could not act arbitrarily at its sweet-will but must act in conformity with standards or norms, without being arbitrary, irrational or irrelevant. If the Government departed from such standard or norm in any particular case or cases its action was liable to be struck down unless it could be shown that the departure was not arbitrary but was based on some valid principle which was not irrational, unreasonable or discriminatory. In the present case as earlier explained by us direct negotiation with those who had come forward with proposals to construct Five Star Hotels was without doubt the most reasonable and rational way of proceeding in the matter rather than inviting tenders or holding public auction. There was nothing discriminatory in the procedure adopted since no other leading hotelier had shown any inclination to come forward. Tenders and Auction were most impractical in the circumstances.

36. In *Kasturilal Lakshmi Reddy vs State of Jammu and Kashmir* (supra), Bhagwati, J. again, speaking for the Court reiterated what he had said earlier in *R.D. Shetty vs International Airport Authority* (supra). He proceeded to say,

> "The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group of section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid

> on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the Governmental action."

With reference to the particular facts of the case, it was stated,

> "The argument of the petitioners was that at the auctions held in December, 1978, January 1979 and April 1979, the price of resin realised was as much as Rs. 484/-, Rs. 520/- and Rs. 700/- per quintal respectively and when the market price was so high, it was improper and contrary to public interest on the part of the state to sell resin to the second respondents at the rate of Rs. 320/- per quintal under the impugned Order. This argument, plausible though it may seem is fallacious because it does not take into account the policy of the state not to allow export of resin outside its territories but to allot it only for use in factories set up within the states. It is obvious that, in view of this policy, no resin would be auctioned by the State and there would be no question of sale of resin in the open market and in this situation, it would be totally irrelevant to import the concept of market price with reference to which the adequacy of the price charged by the State to the second respondents could be judged. If the State were simply selling resin, there can be no doubt that the State must endeavour to obtain the highest price subject, of course, to any other overriding considerations of public interest and in that event, its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. But, where the State has as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation, there can be no scope for complaint that the State is giving resin at a lesser price than that which could be obtained in the open market. The yardstick of price in the open market would be wholly inapt, because in view of the State Policy, there would be no question of any resin being sold in the open market. The object of the State in such a case is not to earn revenue from sale of resin, but to promote the setting up of industries within the State."

And again,

> "If the State were giving tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any other relevant overriding considerations of public weal or interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the

> purpose of setting up the industry."

The observations of the Court in the light of the facts therein appear to fully justify the action of the West Bengal Government in the present case not inviting tenders or not holding public auction.

37. In *State of Haryana vs Jage Ram* (supra), it was held that it was not open to the Excise Authorities to pick and choose a few persons only as the recipients of the notice of reauction. There was no explanation as to how they came to be chosen and what their status and standing in the trade were to justify the choice. The conduct of the authorities was thought not above suspicion. We have already explained why the choice of the Taj Group of Hotels must be held to be beyond suspicion and above reproach.

38. In *Ram & Shyam Company vs State of Haryana* (supra) dealing with the question of disposal of State property, Desai, J. speaking for the court said,

> "Let us put into focus the clearly demaracated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property pertakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State Administration would serve public purpose viz. the welfare State may be able to expand its beneficial activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a taken price to achieve some define constitutionally recognise public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is be bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip, and shat in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which Constitution envisages the setting up of a welfare State."

In *Chenchu Rami Reddy vs Government of Andhra Pradesh* it was observed that public officials entrusted with the care of 'public property' were required to show exemplary vigilance. The Court indicated that the best method of disposal of such property was by public auction and not by private negotiation. That was a case where land belonging to a Math was sold by private treaty for Rs. 20 lakhs when there were people ready to purchase the land for Rs. 80 lakhs. The difference between sale of land and other readily saleable commodities and the allotment of land for establishing a modern Five-Star Hotel of International standard is so obvious as to need no more explanation.

39. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established : State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

40. Applying those tests, we find it is impossible to held that the Government of West Bengal did not act with probity in not inviting tenders or in not holding a public auction but negotiating straight-away at arm's length with the Taj Group of Hotels.

41. The last and final submission of the learned counsel for the appellants relates to the commercial and financial aspects of the lease. According to the learned counsel, the 'nett sales' method of calculating the compensation payable to the Government for the lease of the land has totally sacrificed the State's interests. He submits that if the market value of the land had been fairly determined and the rent had been stipulated at a percentage of the value, the return to the Government would have been much higher. We do not think that there is any basis for any genuine criticism. The 'nett sales' method appears to be a fairly well known method adopted in similar situations. This was what recommended by WEBCOM, the consulting agency of the West Bengal Government who submitted a detailed report on the subject. This was also the recommendation of the Committee of Secretaries who went into the matter in depth. Even to lay persons like us who are no financial experts, it appears that the 'nett sales' method does and the rent-based-on-market-value method does not take into account the appreciating value of land, the inflationary tendency of prices and the profit orientation. Even on *prima facie* view, there appears to be nothing wrong or objectionable in the 'nett sales' method. It is profit oriented and appears to be in the best interests of the Government of West Bengal.

42. On a consideration of all the facts and circumstances of the case, we are satisfied that the Government of West Bengal acted perfectly bona fide in granting the lease of Begumbari land to the Taj Group of Hotels for the construction of a Five-Star hotel in Calcutta. The Government of West Bengal did not fail to take into account any relevant consideration. Its action was not against the interests of the Zoological Garden or not in the best interests of the animal inmates of the zoo or migrant birds visiting the zoo. The financial interests of the State were in no way sacrificed either by not inviting tenders or holding a public auction or by adopting the 'nett sales' method. In the result, the judgment of the learned single judge and the Division Bench of the Calcutta High Court are affirmed and the appeal is dismissed. In the circumstances of the case, we do not desire to award any costs.

Khalid, J.— The tenacity with which this expensive public interest litigation was pursued by the petitioners, before the learned Single Judge and a Division Bench of the Calcutta High Court and before this Court is commendable. But, after hearing the lengthy arguments advanced, I ask myself the question whether this exercise could not have been avoided.

44. Originally the writ petition was filed by five persons. The supporting affidavit to the writ petition was sworn to by the first petitioner who described himself as a trade unionist. Petitioner Nos. 2 & 3 are the life members of the Zoo and the remaining two, bonafide residents of Greater Calcutta and lovers of wild life. The same five persons figured as appellants before the Division Bench. However, before this Court there are only two petitioners, the 1st and the 2nd in the writ petition. 3rd and 4th petitioners figure here as respondents 6th and 7th. The 5th petitioner does not figure in the array of parties.

45. My learned brother has considered the facts in detail and the questions of law relevant for the purpose of this appeal. I fully agree with his conclusions. This short tail piece is with a purpose. This case goes by the name "Public Interest Litigation." I wish to delineate the parameters of public interest litigation concisely, against the background of the facts of this case, so that this salutory type of litigation does not lose its credibility. Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicious. See the facts of this case and the end result.

46. The concern of the appellants has been to preserve the Zoo, to protect and encourage the migratory birds, to keep their trajectory clear, to preserve their diurnal feed and nocturnal habitat and to protect the Zoo. To serve this purpose they want to prevent a 5-Star Hotel coming up in its vicinity in four acres land belonging to the Zoo and thus to see that this land is not lost to the Zoo. The litigation has been pending from 1982 and in the bargain what has happened is described by the learned Trial Judge as follows, in paragraph 130 of his Judgment:

> "130. Prayer for stay of the operation of this order is rejected. Because of the pendency of this matter, valuable time has been lost and if further time is lost, the respondent No.5 may not have any further interest in the matter. They have suffered sufficient loss and the Govt. will also suffer loss. The public has also suffered. Accordingly, I am not inclined to stay this matter any further. I ought to point out further that as the petitioners obtained the interim order, obviously they were not interested in an early hearing of this matter and until a few months back no step was taken to have this matter heard. If a stay is granted, similar situation will follow."

47. This public interest litigation takes its birth, perhaps from the righteous indignation of the petitioners, against the State Government at their bartering away of four acres of land belonging to the Zoo to the Taj Group of Hotels. The writ petition is mainly based on the ground that the decision of the Government is arbitrary. The question to be answered is whether this accusation can be justified. On a perusal of the records I find that the State Government had made available to the Court all the relevant documents so as to satisfy the Court about the propriety of its action. This is how the Trial Judge deals about this aspect of the case:

> "4. Before I deal with the contention of the parties before me I ought to point out one thing. In this case, ultimately the hearing was not confined only in respect of the materials specified in the petition and affidavits or annexures to the same, but the submissions were based on the further documents and filed produced before me mainly by the State and also some documents by the private respondent being respondent No. 5. I ought to point out that this is one of the exceptional cases where the State has made available to this Court all documents in connection with the proposal for lending over a piece of the State Government land to the respondent No.5 to enable them to construct a 5-star hotel in Calcutta. The State Government has produced before me the original files, including those containing the notes and Cabinet Memorandum for my inspection, the facts which I shall set out herein are gathered from these records and files produced before me, though most of them do not find place in the affidavits....."

48. The two portions of Judgments extracted above show two things: one, the petitioners did not take any steps to get the matter heard expeditiously, after they obtained an interim order to get all the work stopped; two, that the State Government made available to the Court all the materials to prove that its decision was taken after mature consideration at all levels.

49. The appellants failed before the learned Trial Judge on all the points raised by them. After an exhaustive discussion of the various aspects of the case, the learned Trial Judge dismissed the petition. The only ground on which the appellants succeeded before the Trial Judge was on locus standi. This preliminary objection of the Hotel Group was rejected.

50. The matter was taken in appeal. The Division Bench in an equally reasoned Judgment, adverting to all the factual aspects of the case, upheld the Judgment of the learned Trial Judge and dismissed the appeal.

51. One redeeming factor in this case is the total absence of any allegation of malafides against the Government by the petitioners. This is how the Division Bench deals with aspect of the case in its Judgment:

> "The appellants before us have impugned the State Government's decision to grant aforesaid four acres of land out of Begumbari Compound to India Hotel Co. Ltd., mainly on the ground that the same was unreasonable and arbitrary. The State Government did not apply its mind to relevant facts before disposing of the said valuable lands in discharge of the public interest. In their writ petition or in course of their submissions before us the appellants did not try to make out a case of personal malice against the State Government or its Ministers and Civil Servants....."

52. The Division Bench held that the decision taken was neither unreasonable nor arbitrary and that taking away of four acres of land from the Zoo was not detrimental to public interest.

53. One would have thought that the concurrent decisions of the learned Single Judge and the Division Bench, on the facts of the case, would have persuaded the appellants, to rest content with the litigation by accepting the verdicts so given. They could have moved the Government or taken other steps to expedite the starting of an additional Zoo with a larger extent which the Government promised. But the appellants felt that public interest would be served better by moving this Court for reconsideration of the factual details. When the matter came up before this Court, this Court gave priority to this case despite the huge pendency of cases before it, to see whether public interest was really in peril or not.

54. During the course of the arguments, we soared high along with the migratory birds into the realms of ecology, environmental protection, public interest, natural justice, arbitrariness, eminent domain and the like and ultimately, from those ethereal regions decended on the terraferma faced with the reality that this case is devoid of any merits and has only to be dismissed. That is why I prefaced this Judgment with the observation that this was an avoidable exercise.

55. The approach of the Taj Group Hotels in this case has been creditably fair. They have given all the assurances necessary to preserve the Zoo and its inmates. They were willing to afford all the requisite safeguards. In the place of a dilapidated hospital, operation theatre and the like, they constructed buildings a new at a cost of Rs. 30 lakhs which amount they were entitled to be eimbursed under clause 25 of the lease, which they voluntarily gave up. In addition to this, they surrendered an area of 288 sq. mtrs. from the land allotted to them to the Zoo. They agreed to build not the usual skyscrapper hotel, but a garden hotel, the height of which would not go beyond 75 feet, despite the fact that there existed in the surrounding area buildings which were very high. This was done to keep free the route of the flight of the birds. They agreed to have subdued light in the hotel, again in the interest of the birds. They also agreed to keep the surroundings of the hotel and the flora well maintained. We were told that already 30000 plants were getting ready to adorn the area to be occupied by them.

56. Regarding the commercial and financial aspects of the lease also there is nothing secretive though they came in for sharp criticism at the hands of the appellants before us. This criticism again, according to me, is unfounded. The learned counsel for the Taj Group made available to us, the method adopted. The method adopted is the nett sales method of calculating the compensation paid. This is a fairly well known method adopted in such situations. This method was also subject to criticism by the appellants' counsel and he in support of his submission handed over to us a calculation, which according to me, betrays unawareness with the method of calculation to be adopted in similar cases. The calculation given to us so far as its arithmetic is concerned is correct. That is this: An amount of 4 crores, if deposited in bank, at a particular rate of compound interest, for 99 years, would swell to an astronomical figure. This calculation is relevant only when you think of selling the land and investing the sale proceeds in a bank. This calculation conveniently forgets that what is involved here is not the sale of the land but a lease by the Government, as a policy decision to the hotel group to start a Five Star Hotel, which according to the Government was a prime need to the city of Calcutta. The calculation handed over has no bearing to the facts of this case at all.

57. A deal like this cannot be concluded by public auction. Here, we do not have a case, again, of sale of a Government property. Therefore, public auction has necessarily to be ruled out. Only Taj Group of Hotels came forward with an offer to start the hotel. The lease was the culmination after a long, elaborate and open procedure with nothing to hide which therefore cannot justifiably be subject to adverse criticism.

58. My purpose in adding these few lines of my own is to highlight the need for restraint on the part of the public interest litigants when they move Courts. Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guide-lines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

59. I should not be understood to say that traditional litigation should stay put. They have to be tackled by other effective methods, like decentralising the judicial system and entrusting majority of traditional litigation to village courts and Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases.

60. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the under-dog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restraint on public interest litigants.

61. Ultimately, by the dismissal of this appeal, the Hotel will be completed and will be commissioned. Six long years have passed by. I do not think that the appellants have achieved anything. The first appellant who is a trade unionist has not espoused any grievance of the mazdoors before us. It was faintly suggested by the Government's counsel that the first petitioner does not represent all the mazdoors. This was refuted by the appellants. For the purpose of this case, we will accept the assertion of the first appellant. Still, we did not have before us any of their grievances ventilated which, if there were any, we would have willingly considered.

62. I conclude this short Judgment, with a lurking doubt in my mind, and with a question "Is there something more than what meets the eye in this case?"

SCALE (PIL) 1981-97
FRANCIS CORALIE MULLIN
1859
Petitioner

VS

THE ADMINISTRATOR, UNION TERRITORY OF DELHI & ORS. *Respondents*

CORAM: P.N. BHAGWATI AND S. MURTAZA FAZAL ALI JJ.

PUBLIC INTEREST LITIGATION — CONSTITUTION — ARTICLE 21 — Right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

Referred: Maneka Gandhi vs Union of India [1979 (1) SCC 248]; M.O. Hoscot vs State of Maharashtra [1979(1) SCR 192]; Hussainara Khatoon II vs Home Secretary, State of Bihar, Patna [1980(1) SCC 81]; Sunil Batra I vs Delhi Administration [1979(1) SCR 392]; Sunil Batra II vs Delhi Administration [1980(2) SCR 557]; Sampat Prakash vs State of Jammu and Kashmir [1969(3) SCR 574]; Maharashtra vs Prabhakar Sanzgiri [1966(1) SCR 702]; D.B. Patnaik vs State of Andhra Pradesh [1975(2) SCR 24].

Bhagwati, J.— This petition under Article 32 of the Constitution raises a question in regard of the right of a detenu under the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act (hereinafter referred to as COFEPOSA Act) to have interview with a lawyer and the members of his family. The facts giving rise to the petition are few and undisputed and may be briefly stated as follows:

2. The petitioner, who is a British national, was arrested and detained in the Central Jail, Tihar under an Order dated 23rd November, 1979 issued under section 3 of the COFEPOSA Act. She preferred a petition in this Court for a writ of habeas corpus challenging her detention, but by a judgment delivered by this Court on 27th February 1980, her petition was rejected with the result that she continued to remain under detention in the Tihar Central Jail. Whilst under detention, the petitioner experienced considerable difficulty in having interview with her lawyer and the members of her family. Her daughter aged about five years and her sister, who was looking after the daughter, were permitted to have interview with her only once in a month and she was not allowed to meet her daughter more often, though a child of very tender age. It seems that some criminal proceeding was pending against the petitioner for attempting to smuggle hashish out of the country and for the purpose of her defence in such criminal proceeding, it was necessary for her to consult her lawyer, but even her lawyer found it difficult to obtain an interview with her because in order to arrange an interview, he was required to obtain prior appointment from

Judgment dated January 13, 1981 in W.P. (Crl.) No. 3042/1980. [1981(1) SCALE 79]

the District Magistrate, Delhi and the interview could take place only in the presence of a Customs Officer nominated by the Collector of Customs. This procedure for obtaining interview caused considerable hardship and inconvenience and there were occasions when, even after obtaining prior appointment from the District Magistrate, Delhi, her lawyer could not have an interview with her since no Customs Officer nominated by the Collector of Customs remained present at the appointed time. The petitioner was thus effectively denied the facility of interview with her lawyer and even her young daughter 5 years old could not meet her except once in a month. This restriction on interviews was imposed by the Prison Authorities by virtue of clause 3(b) sub-clause (i) and (ii) of the Conditions of Detention laid down by the Delhi Administration under an Order dated 23rd August, 1975 issued in exercise of the powers conferred under section 5 of the COFEPOSA Act. These two sub-clauses of clause 3(b) provided inter alia as under:

> 3. The conditions of detention in respect of classification and inter-views shall be as under:
>
> (a)..............
>
> (b) Interviews: Subject to the direction issued by the Administrator from time to time, permission for the grant of interviews with a detenu shall be granted by the District Magistrate, Delhi as under:-
>
> (i) Interview with legal adviser:
> Interview with legal adviser in connection with defence of a detenu in a criminal case or in regard to writ petitions and the like, may be allowed by prior appointment, in the presence of an officer of Customs/Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement, who sponsors the case for detention;
>
> (ii) Interview with family members:
> A monthly interview may be permitted for members of the family consisting of wife, children or parents of the detenu...."

The petitioner, therefore, preferred a petition in this Court under Article 32 challenging the constitutional validity of sub-clauses (i) and (ii) of clause 3(b) of the Conditions of Detention Order and praying that the Administrator of the Union Territory of Delhi and the Superintendent of Tihar Central Jail be directed to permit her to have interview with her lawyer and the members of her family without complying with the restrictions laid down in those sub-clauses.

3. The principal ground on which the constitutional validity of sub-clauses (i) and (ii) of clause 3(b) of the Conditions of Detention Order was challenged was that these provisions were violative of Articles 14 and 21 of the Constitution in as much as they were arbitrary and unreasonable. It was contended on behalf of the petitioner that allowing interview with the members of the family only once in a month was discriminatory and unreasonable, particularly when undertrial prisoners were granted the facility of interview with relatives and friends twice in a week under Rule 559A and convicted prisoners were permitted to have interview with their relatives and friends once in a week under Rule 550 of the Rules set out in the Manual for the Superintendence and Management of Jails in the Punjab. The petitioner also urged that a detenu was entitled under Article 22 of the Constitution to consult and be defended by a legal practitioner of his choice and she was, therefore entitled to the facility of interview with a lawyer whom he wanted to consult or appear for him in a legal proceeding and the requirement of prior appointment for interview and of the presence of a Customs or Excise Officer at the interview was arbitrary and unreasonable and therefore violative of Articles 14 and 21. The respondents resisted the contentions of the petitioner and submitted that sub-clauses (i) and (ii) of clause 3(b) were not violative of Articles 14 and 21, since the restrictions imposed by them were reasonable, fair and just, but stated that they would have no objection if instead of a monthly interview, the petitioner was granted the facility of interview with her daughter and sister twice in a week as in the case of undertrial prisoners and so far as interview with the lawyer is concerned, they would not insist on the presence of a customs or excise officer at the interview. Though these two concessions were made on behalf of the respondents at the hearing of the petition before us, the question still remains whether sub-clause (i) and (ii) of cl. 3(b) are valid and it is necessary that we should examine this question in the context of our constitutional values, since there are a large number of detenues under the COFEPOSA Act and the conditions of their detention in regard to interviews must be finally settled by this Court.

4. Now it is necessary to bear in mind the distinction between 'preventive detention' and 'punitive detention', when we are considering the question of validity of conditions of detention. There is a vital distinction between these two kinds of detention. 'Punitive detention' is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while 'preventive detention' is not by way of punishment at all, but it is intended to pre-empt a person from indulging in conduct injurious to the society. The power of preventive detention has been recognised as a necessary evil and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. It is a drastic power to detain a person without trial and there are many countries where it is not allowed to be exercised except in times of war or aggression. Our Constitution does recognise the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. Art. 22 in clauses (4) to (7), deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of preventive detention taken under such law must be in conformity with the restrictions laid down by those clauses on pain of invalidation. But apart from Art. 22, there is also Art. 21 which lays down restrictions on the power of preventive detention. Until the decision of his Court in *Maneka Gandhi v. Union of India* (1979) 1 SCC 248, a very narrow and constricted meaning was given to the guarantee embodied in Art. 21 and that article was understood to embody only that aspect of the rule of law, which requires that no one shall be deprived of his life or personal liberty without the authority of law. It was construed only as a guarantee against executive action unsupported by law. So long as there was some law, which prescribed a procedure authorising deprivation of life or personal liberty, it was supposed to meet the requirement of Art. 21. But in Maneka Gandhi's case (supra), this Court for the first time opened-up a new dimension of Art. 21 and laid down that Art. 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making. It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be *reasonable, fair and just* and if it is not so, the law would be void as violating the guarantee of Art. 21. This Court expanded the scope and ambit of the right to life and personal liberty enshrined in Art. 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights. This decision in Maneka Gandhi's case became the starting point-the spring-board-for a most spectacular evolution of the law culminating in the decisions in *M.O. Hoscot v. State of Maharashtra, (1979) 1 SCR 192 Hussainara Khatoon's case ((1980) 1 SCC 81 the first Sunil Batra's case (1979) 1 SCR 392 and the second Sunil Batra's case. (1980) 2 SCR 557.* The position now is that Art. 21 as interpreted in Maneka Gandhi's case (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The law of preventive detention has therefore now to pass the test not only of Art. 22, but also of Art. 21 and if the constitutional validity of any such law is challenged, the Court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. But despite these safeguards laid down by the Constitution and creatively evolved by the Courts, the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished and prized possession of man in a civilised society. It is a power to be exercised with the greatest care and caution and the courts have to be ever vigilant to see that this power is not abused or misused. It must always be remembered that preventive detention is qualitatively different from punitive detention and their purposes are different. In case of punitive detention, the person concerned is detained by way of punishment after he is found guilty of wrong doing as a result of a trial where he has the fullest opportunity to defend himself, while in case of preventive detention, he is detained merely on suspicion with a view to preventing him from doing harm in future and the opportunity that he has for contesting the action of the Executive is very limited. Having regard to this distinctive character of preventive detention, which aims not at punishing an individual for a wrong done by him, but at curtailing his liberty with a view to pre-empting his injurious activities in future, it has been laid down by this Court in *Sampat Prakash v. State of Jammu and Kashmir (1969) 3 SCR 574.* "that the restrictions placed on a person preventively detained must, consistently with the effectiveness of detention, be minimal."

5. The question which then arises is whether a person preventively detained in a prison has any rights which he can enforce in a Court of law. Once his freedom is curtailed by incarceration in a jail, does he have any fundamental rights at all or does he leaves them behind, when he enters the prison gate? The answer to this question is no longer *res integra.* It has been held by this Court in the two Sunil Batra cases that "fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration." The prisoner or detenu has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarceration. Even before the two Sunil

Batra cases, this position was impliedly accepted in *State of Maharashtra v. Prabhakar Sanzgiri 1966 (1) SCR 702* and it was spelt-out clearly and in no uncertain terms by Chandrachud, J. as he then was, in *D. B. Patnaik v. State of Andhra Pradesh:* 1975 (2) SCR 24 •

> "Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails to by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practise" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Art. 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law."

This statement of the law was affirmed by a Bench of five Judges of this Court in the first Sunil Batra case (supra) and by Krishna Iyer, J. speaking on behalf of the Court in the second Sunil Batra case (supra). Krishna Iyer, J. in the latter case proceeded to add in his characteristic style: "The jurisdictional reach and range of this Court's writ to hold prison caprice and cruelty in constitutional leash is incontestable" and concluded by observing: "Thus it is now clear law that a prisoner wears the armour of basic freedom even behind bars and that on breach thereof by lawless officials the law will respond to his distress signals through `writ' aid. The Indian human has a constant companion-the Court armed with the Constitution." It is interesting to note that the Supreme Court of the United States has also taken the same view in regard to rights of prisoners. Mr. Justice Douglas struck a humanistic note when he said in *Eve Pall's case: 417 U.S. 817: 41 L.ed 2d 495.*

> "Prisoners are still persons entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requirements of due process."

So also in *Charles Wolff's case, 41 L.ed. 2d 935,* Mr Justice White made the same point in emphatic terms:

> "But, though his rights may be diminished by environment, a prisoner is not wholly stripped off constitutional protections, when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country."

Mr. Justice Douglas reiterated his thesis when he asserted:

> "Every prisoner's liberty i.e. of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him is then only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the system requires procedural safeguards."

Mr. Justice Marshall also expressed himself clearly and explcitly in the same terms:

> "I have previously stated my view that a prisoner does not shed his basic constitutional rights at the prison gate, and I fully support the court's holding that the interest of inmates in freedom from imposition of serious discipline is

> a `liberty' entitled to due process protection."

What is stated by these learned Judges in regard to the rights of a prisoner under the Constitution of the United States applies equally in regard to the rights of a prisoner or detenu under our constitutional system. It must, therefore, now be taken to be well-settled that a prisoner or detenu is not stripped of his fundamental or other legal rights, save those which are inconsistent with his incarceration, and if any of these rights are violated, the Court which is, to use the words of Krishna Iyer, J., not a distant abstraction ompnipotent in the books but an activist institution which is the cynosure of public hope," will immediately spring into action and run to his rescue.

6. We must therefore proceed to consider whether any of the Fundamental Rights of the detenu are violated by sub-clauses (i) and (ii) of clause 3(b) so as to result in their invalidation wholly or in part. We will first take up for consideration the Fundamental Right of the detenu under Article 21 because that is a Fundamental Right which has, after the decision in Maneka Gandhi's case (supra), a highly activist magnitude and it embodies a constitutional value of supreme importance in a democratic society. It provides that no one shall be deprived of his life or personal liberty except according to procedure established by law and such procedure shall be reasonable fair, and just. Now what is the true scope and ambit of the right to life guaranteed under this Article? While arriving at the proper meaning and content of the right to life, we must remember that it is a constitutional provision which we are expounding and moreover it is a provision enacting a Fundamental right and the attempt of the court should always be to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. The luminous guideline in the interpretation of a constitutional provision is provided by the Supreme Court of United States in Weems vs. U.S. 54 Lawyers Edition 801.

> "Legislation, both statutory and constitutional is enacted, it is true, from an experience of evils but-its general language should not, therefore, be necessarily confined to the form that evil had, therefore taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle to be vital, must be capable of wider application than mischief which gave it birth. This is puculiary true of constitutions. They are not ephemeral enactments designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immorality as nearly as human institutions can approach it." The future is their care, and provisions for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared, in the words might be lost in reality. And this has been recognised. The meaning and vitality of the Constitution have developed against narrow and restrictive construction."

This principal of interpretation which requires that a Constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the

Constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges, applies with greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpretated in a broad and expensive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.

7. Now obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. In Kharak Singh Vs. State of Uttar Pradesh (1964) 1 SCR 232, Suba Rao J. quoted with approval the following passage from the judgment of Field J. in Munn Vs. Illinois (1877) 94 US 113 to emphasize the quality of life covered by Article 21:

> *"By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world."

and this passage was again accepted as laying down the correct law by the Constitution Bench of this Court in the first Sunil Batra case (supra). Every limb or faculty through which life is enjoyed is thus protected by Article 21 and *a fortiorari,* this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article 21 may be total or partial, neither any limb or faculty can be totally destroyed nor can it be partially damaged. Moreover it is every kind of deprivation that is hit by Article 21, whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all: it is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. It is therefore clear that any act which damages or injures or interferes with the use of, any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.

8. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner or detenu obviously cannot move about freely by going outside the prison walls nor can be socialise at his free will with persons outside the jail. But, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Article 14 and 21, unless it is reasonable, fair and just.

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* Sunil Batra Vs. Delhi Admn. P. 503.

10. The same consequence would follow even if this problem is considered from the point of view of the right to personal liberty enshrined in Article 21, for the right to have interviews with members of the family and friends is clearly part of personal liberty guaranteed under that Article. The expression 'personal liberty' occurring in Article 21 has been given a broad and liberal interpretation in Maneka Gandhi's case (supra) and it has been held in that case that the expression 'personal liberty' used in that Article is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which "have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19." There can therefore be no doubt that 'personal liberty' would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends in arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21.

11. Now obviously when an undertrial prisoner is granted the facility of interviews with relatives and friends twice in a week under Rule 559A and a convicted prisoner is permitted to have interviews with his relatives and friends once in a week under Rule 550, it is difficult to understand how sub-clause (ii) of Clause 3(b) of the Conditions of Detention Order, which restricts the interview only to one in a month in case of a detenu, can possibly be regarded as reasonable and non-arbitrary, particularly when a detenu stands on a higher pedestal than an undertrial prisoner or a convict and, as held by this Court in

Sampath Prakash's case (supra) restrictions placed on a detenu must "consistent with the effectiveness of detention, be minimal." We would therefore unhestatingly hold sub-clause (ii) of clause 3(b) to be violative of Articles 14 and 21 in so far as it permits only one interview in a month to a detenu. We are of the view that a detenu must be permitted to have atleast two interviews in a week with relatives and friends and it should be possible for a relative or friend to have interview with the detenu at any reasonable hour on obtaining permission from the Superintendent of the Jail and it should not be necessary to seek permission of the District Magistrate, Delhi as the latter procedure would be cumbrous and unnecessary from the point of view of security and hence unreasonable. We would go so far as to say that even independently of Rules 550 and 559A, we would regard the present norm of two interviews in a week for prisoners as furnishing a criterion of what we would consider reasonable and non-arbitrary.

12. The same reasoning must also result in invalidation of sub-clause (i) of clause 3(b) of the Conditions of Detention Order which prescribes that a detenu can have interview with a legal adviser only after obtaining prior permission of the District Magistrate, Delhi and the interview has to take place in the presence of an officer of Customs/Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who has sponsored the case for detention. The right of a detenu to consult a legal adviser of his choice for any purpose not necessarily limited to defence in a criminal proceeding but also for securing release from preventive detention or filing a writ petition or prosecuting any claim or proceeding, civil or criminal, is obviously included in the right to live with human dignity and is also part of the personal liberty and the detenu cannot be deprived of this right nor can this right of the detenu be interfered with except in accordance with reasonable, fair and just procedure established by a valid law. A prison regulation may, therefore, regulate the right of a detenu to have interview with a legal adviser in a manner which is reasonable, fair and just but it cannot prescribe an arbitrary or unreasonable procedure for regulating such an interview and if it does so, it would be violative of Articles 14 and 21. Now in the present case the legal adviser can have interview with a detenu only by prior appointment after obtaining permission of the District Magistrate, Delhi. This would obviously cause great hardship and inconvenience because the legal adviser would have to apply to the District Magistrate, Delhi well in advance and then also the time fixed by the District Magistrate, Delhi may not be suitable to the legal adviser who would ordinarily be a busy practitioner and, in that event, from a practical point of view the right to consult a legal adviser would be rendered illusory. Moreover, the interview must take place in the presence of an officer of Customs/Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who has sponsored the detention and this too would seem to be an unreasonable procedural requirement because in order to secure the presence of such officer at the interview, the District Magistrate, Delhi would have to fix the time for the interview in consultation with the Collector of Customs/Central Excise or the Deputy Director of Enforcement and it may become difficult to synchronise the time which suits the legal adviser with the time convenient to the concerned officer and furthermore if the nominated officer does not, for any

reason, attend at the appointed time, as seems to have happened on quite a few occasions in the case of the petitioner, the interview cannot be held at all and the legal adviser would have to go back without meeting the detenu and the entire procedure for applying for an appointment to the District Magistrate, Delhi would have to be gone through once again. We may point out that no satisfactory explanation has been given on behalf of the respondents disclosing the rationale of this requirement for prior permission of District Magistrate and presence of Customs officer for a detenu's interview with a legal adviser.

13. We are therefore of the view that sub-clause (i) of clause 3(b) regulating the right of a detenu to have interview with a legal adviser of his choice is violative of Art. 14 and 21 and must be held to be unconstitutional and void. We think that it would be quite reasonable if a detenu were to be entitled to have interview with his legal adviser at any reasonable hour during the day after taking appointment from the Superintendent of the Jail, which appointment should be given by the Superintendent without any avoidable delay. We may add that the interview need not necessarily take place in the presence of a nominated officer of Customs/Central Excise/Enforcement but if the presence of such officer can be conveniently secured at the time of the interview, then such officer and if his presence cannot be so secured, then any other Jail official may, if thought necessary, watch the interview but not so as to be within hearing distance of the detenu and the legal adviser.

14. We accordingly allow the writ petition and grant relief to the extent indicated above.

SCALE (PIL) 1981-97 1868
SUPREME COURT LEGAL AID COMMITTEE *Petitioner*
VS
UNION OF INDIA & ORS. *Respondents*

CORAM: S.C. AGRAWAL, K. VENKATASWAMI AND V.N. KHARE, JJ.

PUBLIC INTEREST LITIGATION — LEGAL AID — PROVISIONS — THE LEGAL SERVICES AUTHORITIES ACT, 1987 — SECTION 28 & 29A — Provisions of Chapter III have not been extended to a number of States and Union Territories since relevant Rules u/S 28 of the Act not framed — Direction made that concerned States and UTs shall frame relevant rules within two months — Non-constitution of High Court Legal Services Committee by some States and Union Territories — Regulations required to be framed u/S 29A not framed — Direction made that concerned State Governments and Union Territories Administrations shall frame regulations and constitute the High Court Legal Service Committee within two months — In the event of failure to comply with these directions — Contempt proceedings will have to be initiated against the Chief Secretary of the State Government/Union Territory Administration concerned — Affidavit about compliance of these directions to be filed by 3.2.98.

Order dated November 25, 1997 in W.P. (Crl.) No. 312/94. [1998(2) SCALE 79]

1. In pursuance of the direction contained in the order dated August 12, 1997 the petitioner has filed an application for amendment of the writ petition. The said application is allowed and the amendments sought are permitted to be made. Shri Muralidhar, the learned counsel for the petitioner will file the amended copy of the writ petition within two weeks.

2. In pursuance of the directions contained in the Order dated October 14, 1997, an affidavit of Shri Bir Singh, Under Secretary to the Government of India in the Ministry of Law and Justice has been filed on behalf of the Union of India. We have perused the said affidavit. It appears that while the provisions of the Act except Chapter III have been extended to all the States vide Notification dated November 9, 1995, the provisions of Chapter III have not been extended to a number of States and Union Territories for the reason that for the purpose of extending the provisions of Chapter III, it is necessary that the concerned State Government/Union Territory Administration should have framed the relevant rules under Section 28 of the Act. It has been stated that since rules have not been framed in certain States/Union Territories, provisions of Chapter III have not been extended there.

3. According to the affidavit of Shri Bir Singh the following States/Union Territories have not framed the rules so far:-

1. Arunachal Pradesh
2. Kerala
3. Maharashtra
4. Nagaland
5. Tripura
6. Union Territory of Chandigarh
7. Union Territory of Daman & Due
8. Union Territory of Dadra & Nagar Haveli
9. Union Territory of Lakshadweep; and
10. Pondicherry.

4. Ms. Kamini Jaiswal, the learned counsel states that rules have been framed for the Union Territory of Chandigarh and have been notified vide Notification dated September 12, 1997.

5. The provisions of the Act except Chapter III were extended to all the States and the Union Territories on November 9, 1995. More than two years have elapsed. The time available was more than sufficient for the State Governments and the Union Territories to act and frame rules under Section 28 of the Act. It is directed that the States and the Union Territories which have not framed the rules so far i.e. the above mentioned States/Union Territories excluding the Union Territory of Chandigarh shall frame the relevant rules under Section 28 and notify the same within a period of two months. As soon as the rules are framed, the same shall be duly intimated to the Union Government and the Union Government shall take steps to issue the notification applying the provisions of Chapter III to that State/Union Territory within two weeks from the date of such intimation.

6. In the amendment application filed by the petitioner it is stated that the High Court Legal Services Committee has not been constituted in a number of States for the reason that the regulations which are required to be framed under Section 29A of the Act have not been framed as yet. According to the amendment application such regulations have not been framed in the States of Gujarat, Mizoram, Uttar Pradesh, Madhya Pradesh, Punjab and Tamil Nadu. It is not clear as to whether the High Court Legal Services Committee has not been constituted in the various States/Union Territories on account of the failure to frame the regulations or even though the regulations have been made but such Committee has not been constituted. Shri Muralidhar states that the averments in the amendment application have been made on the basis of the information that has been supplied by some of the States/Union Territories and that some States/Union Territories have not furnished the necessary information in that regard. It is, therefore, directed that in the States/Union Territories where the High Court Legal Services Committee has not been constituted either because of the absence of the regulations or even though the regulations have been made such committee has not been constituted, the concerned State Government/Union Territory Administration shall frame the regulations and constitute the High Court Legal Service Committee within a period of two months from the date of this order.

7. There are many States/Union Territories in which inspite of the rules having been framed steps have not been taken to constitute the various committees as contemplated by the Act. The name of some of the States are mentioned in the application for amendment submitted by the petitioner but the information is not complete. It is directed that the States/Union Territories in which the various committees have not been constituted in accordance with the rules, the concerned State Government/Union Territory Administration shall constitute the various committees under the Act within a period of two months.

8. It is made clear that in the event of failure to comply with these directions contempt proceedings will have to be initiated against the Chief Secretary of the State Government/Union Territory Administration concerned. An affidavit about compliance of these directions shall be filed on behalf of the State Governments/Union Territories by February 3, 1998.

9. A copy of this order be sent to the Chief Secretaries of all the States/Union Territories.

10. List on 10.2.1998.

SCALE (PIL) 1981-97 1870

CENTER OF INDIAN TRADE UNION & ANR. *Petitioners*

VS

U.O.I. & ORS. *Respondents*

CORAM: J.S. VERMA, CJI. AND SUJATA V. MANOHAR, J.

PUBLIC INTEREST LITIGATION — STATE ACCOUNTABILITY — ENRON POWER PROJECT — Validity of the project and the contract known as Dabhol Power Project — Accountability of the State of Maharashtra on account of the inconsistent stand taken by it from time to time — The Writ Petition that was filed in the High Court was without obtaining leave of the court to bring the same in a representative capacity — Earlier order now reported [1997(4) SCALE (SP) 16].

1. We are informed that 12 earlier writ petitions relating to the same project and some of them allegedly involving same or similar questions were filed by different petitioners and have been dismissed by the High Courts and a few of them also by this Court. Sh. Shanti Bhushan, learned counsel for the petitioners submits that none of those earlier matters was in a representative capacity inasmuch as leave of the Court was not obtained to pursue those matters in representative capacity. We find that in the present case also no leave was granted by the High Court permitting the petitioner to pursue the matter in representative capacity. This may, by itself, be a sufficient reason not to

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Order dated April 21, 1997 in S.L.P. (C) No. 7734/97 (From the judgment and order dated 02/12/96 in WP2456/96 of the High Court of Bombay) [1998(2) SCALE (SP) 4] entertain this special leave petition. Learned counsel for the petitioners submits that an appropriate application seeking leave to pursue the matter in representative capacity would be filed in this Court in order to challenge the High Court's order dismissing the petitioner's writ petition. The SLP is, therefore, adjourned to 2nd May, 1997.

SCALE (PIL) 1981-97 1871

NATIONAL HUMAN RIGHTS COMMISSION *Petitioner*

VS

STATE OF ARUNACHAL PRADESH & ANR. *Respondents*

CORAM: A.M. AHMADI, CJI. AND S.C. SEN, J.

PUBLIC INTEREST LITIGATION — UNDER PRIVILEGED/WEAKER SECTIONS — TRIBALS — RIGHTS OF CHAKMA/HAJONG TRIBALS — Rights of Chakma/Hajong tribals who have settled down in the State of Arunachal Pradesh — Court directed the State to ensure life and personal liberty of each and every Chakma and not evicted from their homes and all notices for eviction should be dealt with in accordance with law and applications for registration as citizens of India under Section 5(1)(a) of the Citizenship Act, 1955, will be dealt in accordance with law.

Referred: State of Arunachal Pradesh vs Khudiram Chakma [1994(Supp.1) SCC 615 = 1993(2) SCALE 682]; Louis De Raedt vs Union of India [1991(3) SCC 554 = 1991(2) SCALE 127].

Ahmadi, CJI.— This public interest petition, being a writ petition under Article 32 of the Constitution, has been filed by the National Human Rights Commission (hereinafter called "NHRC") and seeks to enforce the rights, under Article 21 of the Constitution, of about 65,000 Chakma/ Hajong tribals (hereinafter called "Chakmas"). It is alleged that these Chakmas, settled mainly in the State of Arunachal Pradesh, are being persecuted by sections of the citizens of Arunachal Pradesh. The first respondent is the State of Arunachal Pradesh and the second respondent is the Union of India.

2. The NHRC has been set up under the Protection of Human Rights Act, 1993 (No. 10 of 1994). Section 18 of this Act empowers the NHRC to approach this Court in appropriate cases.

3. The factual matrix of the case may now be referred to. A large number of Chakmas from erstwhile East Pakistan (now Bangladesh) were displaced by the Kaptai Hydel Power Project in 1964. They had taken shelter in Assam and Tripura. Most of them were settled in these States and became Indian citizens in due course of time. Since a large number of refugees had taken shelter in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance in this regard from certain other States. Thereafter, in consultation with the erstwhile NEFA administration (North East Frontier Agency - now Arunachal Pradesh). about 4,012 Chakmas were settled in parts of NEFA. They were also allotted some land in consultation with local tribals. The Government of India had also sanctioned rehabilitation assistance

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Judgment dated January 9, 1995 in W.P. (C) No. 720 of 1995. [1996(1) SCALE 155]

@ Rs. 4,200/- per family. The present population of Chakmas in Arunachal Pradesh is estimated to be around 65,000.

4. The issue of conferring citizenship on the Chakmas was considered by the second respondent from time to time. The Minister of State for Home Affairs has on several occasions expressed the intention of the second respondent in this regard. Groups of Chakmas have represented to the petitioner that they have made representations for the grant of citizenship under Section 4(1)(a) of the Citizenship Act, 1955 (hereinafter called "The Act") before their local Deputy Commissioners but no decision has been communicated to them. In recent years, relations between citizens of Arunachal Pradesh and the Chakmas have deteriorated, and the latter have complained that they are being subjected to repressive measures with a view to forcibly expelling them from the State of Arunachal Pradesh.

5. On September 9, 1994, the People's Union for Civil Liberties, Delhi brought this issue to the attention of the NHRC which issued letters to the Chief Secretary, Arunachal Pradesh and the Home Secretary, Government of India making enquiries in this regard. On September 30, 1994, the Chief Secretary of Arunachal Pradesh faxed a reply stating that the situation was totally under control and adequate police protection had been given to the Chakmas.

6. On October 15, 1994, the Committee for Citizenship Rights of the Chakmas (hereinafter called "The CCRC") filed a representation with the NHRC complaining of the persecution of the Chakmas. The petition contained a press report carried in "The Telegraph" dated August 26, 1994 stating that the All Arunachal Pradesh Students Union (hereinafter called "AAPSU") had issued "quit notices" to all alleged foreigners, including the Chakmas, to leave the State by September 30, 1995. The AAPSU had threatened to use force if its demand was not acceded to. The matter was treated as a formal complaint by the NHRC and on October 28, 1994, it issued notices to the first and the second respondents calling for their reports on the issue.

7. On November 22, 1994, the Ministry of Home Affairs sent a note to the petitioner reaffirming its intention of granting citizenship to the Chakmas. It also pointed out that Central Reserve Forces had been deployed in response to the threat of the AAPSU and that the State Administration had been directed to ensure the protection of the Chakmas. On December 7, 1994, the NHRC directed the first and second respondents to appraise it of the steps taken to protect the Chakmas. This direction was ignored till September, 1995 despite the sending of reminders. On September 25, 1995, the first respondent filed an interim reply and asked for time of four weeks' duration to file a supplementary report. The first respondent did not, however, comply with its own deadline.

8. On October 12, 1995 and again on October 28, 1995, the CCRC sent urgent petitions to the NHRC alleging immediate threats to the lives of the Chakmas. On October 29, 1995, the NHRC recorded a *prima facie* conclusion that the officers of the first respondent were acting in coordination with the AAPSU with a view to expelling the Chakmas from the State of Arunachal Pradesh. The NHRC stated that since the first respondent was delaying the matter, and since it had doubts as to whether its own efforts would be sufficient to sustain the Chakmas in their own habitat, it had decided to approach this Court to seek appropriate reliefs.

9. On November 2, 1995, this Court issued an interim order directing the first respondent to ensure that the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law.

10. We may now refer to the stance of the Union of India, the second respondent, on the issue. It has been pointed out that, in 1965, pursuant to extensive discussions between the Government of India and the NEFA administration, it was decided to send the Chakmas for the purposes of their resettlement to the territory of the present day Arunachal Pradesh. The Chakmas have been residing in Arunachal Pradesh for more than three decades, having developed close social, religious and economic ties. To uproot them at this stage would be both impracticable and inhuman. Our attention has been drawn to a Joint Statement issued by the Prime Ministers of India and Bangladesh at New Delhi in February, 1972, pursuant to which the Union Government had conveyed to all the States concerned, it's decision to confer citizenship on the Chakmas, in accordance with Section 5(1)(a) of the Act. The second respondent further states that the children of the Chakmas, who were born in India prior to the amendment of the Act in 1987, would have legitimate claims to citizenship. According to the Union of India, the first respondent has been expressing reservations on this account. By not forwarding the applications submitted by the Chakmas along with their reports for grant of citizenship as required by Rule 9 of the Citizenship Rules, 1955, the officers of the first respondent are preventing the Union of India from considering the issue of citizenship of the Chakmas. We are further informed that the Union of India is actively considering the issue of citizenship and has recommended to the first respondent that it take all necessary steps for providing security to the Chakmas. To this end, central para-military forces have been made available for deployment in the strife-ridden areas. The Union Government favours a dialogue between the State Government, the Chakmas and all concerned within the State to amicably resolve the issue of granting citizenship to the Chakmas while also redressing the genuine grievances of the citizens of Arunachal Pradesh.

11. The first respondent, in its counter to the petition, has contended before us that the allegations of violation of human rights are incorrect; that it has taken *bona fide* and sincere steps towards providing the Chakmas with basis amenities and has, to the best of its ability, protected their lives and properties. It is further contended that the issue of citizenship of the Chakmas has been conclusively determined by the decision of this Court in *State of Arunachal Pradesh v. Khudiram Chakma* (1994 Supp. (1) SCC 615 - hereinafter called "*Khudiram Chakma's case*"). It is therefore contended that since the Chakmas are foreigners, they are not entitled to the protection of fundamental rights except Article 21. This being so, the authorities may, at any time, ask the Chakmas to move. They also have the right to ask the Chakmas to quit the state, if they so desire. According to the first respondent, having lost their case in this Court, the Chakmas have "raised a bogey of violation of human rights."

12. The first respondent has filed a counter to the stand taken by the Union of India. The first respondent denies that the Union of India had sent the CRPF Battalions of its own accord; according to it, they were sent pursuant to its letter dated 20.9.1994 asking for assistance. It has also denied that certain Chakmas were killed on account of economic blockades effected by the AAPSU; according to it, these casualties were the result of a malarial epidemic. The first respondent reiterates that the *sui generis* Constitutional position of the State debars it from permitting outsiders to be settled within its territory, that it has limited resources and that its economy is mainly dependent on the vagaries of nature; and that it has no financial resources to tend to the needs of the Chakmas having already spent approximately Rs. 100 crores on their upkeep. It has also been stated that the Union of India has refused to share its financial responsibility for the upkeep of the Chakmas.

13. Referring to the issue of grant of citizenship it is submitted as follows:

> "It is submitted that under the Citizenship Act, 1955 and the Rules made thereunder a specific procedure is provided for forwarding the application for grant of citizenship. According to that after receiving the application, the DC of the area makes necessary enquiries about the antecedents of the applicant and after getting a satisfactory report forwards the case to the State Government which in turn forwards it to the Central Government. It is submitted that on enquiry if the report is adverse the DC would not forward it further. It is submitted that the applications, if any, made in this regard have already been disposed of after necessary enquiry. There is no application pending before the DC."

It may be pointed out that this stand of the first respondent is in direct contravention of the stand adopted by it in the representation dated September 25, 1995, submitted by it to the NHRC where it had stated:

> "The question of grant of citizenship is entirely governed by the Citizenship Act, 1955 and the Central Government is the sole authority to grant citizenship. The State Government has no jurisdiction in the matter."

14. It is further submitted by the first respondent that under the Constitution, the State of Arunachal Pradesh enjoys a special status and, bearing in mind its ethnicity, it has been declared that it would be administered under Part X of the Constitution. That is the reason why laws and regulations applicable during the British Regime continue to apply even today. The settlement of Chakmas in large numbers in the State would disturb its ethnic balance and destroy its culture and identity. The special provisions made in the Constitution would be set at naught if the State's tribal population is allowed to be invaded by people from outside. The tribals, therefore, consider Chakmas as a potential threat to their tradition and culture and are, therefore, keen that the latter do not entrench themselves in the State. Besides, the financial resources of the State without Central assistance, which is ordinarily not forthcoming, would throw a heavy burden on the State which it would find well nigh impossible to bear. In the circumstances, contends the first respondent, it is unfair and unconstitutional to throw the burden of such a large number of Chakmas on the State.

15. We are unable to accept the contention of the first respondent that no threat exists to the life and liberty of the Chakmas guaranteed by Article 21 of the Constitution, and that it has taken adequate steps to ensure the protection of the Chakmas. After handling the present matter for more than a year, the NHRC recorded a prima facie finding that the service of quit notices and their admitted enforcement appeared to be supported by the officers of the first respondent. The NHRC further held that the first respondent had, on the one hand, delayed the disposal of the matter by not furnishing the required response and had, on the other hand, sought to enforce the eviction of the Chakmas through its agencies. It is to be noted that, at no time, has the first respondent sought to condemn the activities of the AAPSU. However, the most damning facts against the first respondent are to be found in the counter affidavit of the second respondent. In the assessment of the Union of India, the threat posed by the AAPSU was grave enough to warrant the placing of two additional battalions of CRPF at the disposal of the State Administration. Whether it was done at the behest of the State Government or by the stay ion on its own is of no consequence; the to, a t that it had become necessary speaks for undelf. The second respondent further notes that after the expiry of the deadline of October 30, 1994, the AAPSU and other tribal student organisations continued to agitate and press for the expulsion of all foreigners including the Chakmas. It was reported that the AAPSU had started enforcing of economic blockades on the refugee camps, which adversely affected the supply of rations, medical and essential facilities, etc., to the Chakmas. Of course the State Government has denied the allegation, but the independent inquiry of the NHRC shows otherwise. The fact that the Chakmas were dying on account of the blockade for want of medicines is an established fact. After reports regarding lack of medical facilities and the spread of malaria and dysentery in Chakma settlements were received, the Union Government advised the first respondent to ensure normal supplies of essential commodities to the Chakma settlement. On September 20, 1995 the AAPSU, once again, issued an ultimatum citing December 31, 1995 as the fresh deadline for the ousting of Chakmas. This is yet another threat which the first respondent has not indicated how it proposes to counter.

16. It is, therefore, clear that there exists a clear and present danger to the lives and personal liberty of the Chakmas. In *Louis De Raedt v. Union of India* [(1991) 3 SCC 554] and *Khudiram Chakma's case* this court held that foreigners are entitled to the protection of Article 21 of the Constitution.

17. The contention of the first respondent that the ruling of this Court in *Khudiram Chakma's* case has foreclosed the consideration of the citizenship of Chakmas is misconceived. The facts of that case reveal that the appellant and 56 families migrated to India in 1964 from erstwhile East Pakistan and were lodged in the Government Refugee Camp at Ledo. They were later shifted to another camp at Miao. In 1966, the State Government drew up the Chakma Resettlement Scheme for refugees and the Chakmas were allotted lands in two villages. The appellant, however, strayed out and secured land in another area by private negotiations. The State questioned the legality of the said transaction since, under the Regulations then in force, no person other than a native of that District could acquire land in it. Since there were complaints against the appellant and others who had settled on this land, the State by order dated February 15, 1984, directed that they shift to the area earmarked for them. This order was challenged on the ground that Chakmas who had settled there were citizens of India and by seeking their forcible eviction, the State was violating their fundamental rights and, in any case, the order was arbitrary and illegal as violative of the principles of natural justice. On the question of citizenship, they invoked section 6-A of the Act which, inter alia, provides that all persons of Indian origin who came before January 1, 1966 to Assam from territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, and who had been ordinarily resident in Assam since their entry into Assam shall be deemed to be citizens of India as from January 1, 1966. Others who had come to Assam after that date and before March 25, 1971, and had been ordinarily resident in Assam since then and had been detected to be foreigners, could register themselves. It will thus be seen that the appellant and others claimed citizenship under this special provision made pursuant to the Assam Accord. The High Court held that the appellant and others did not fall under the said category as they had stayed in Assam for a short period in 1964 and had strayed away therefrom in the area now within the State of Arunachal Pradesh. On appeal, this Court affirmed that view. It is, therefore, clear that in that case, the Court was required to consider the claim of citizenship based on the language of Section 6-A of the Act. Thus, in *Khudiram Chakma's case,* this Court was seized of a matter where 57 Chakma families were seeking to challenge an order requiring them to vacate land bought by them in direct contravention of clause 7 of the Bengal Eastern Frontier Regulation, 1873. The issue of citizenship was raised in a narrower context and was limited to Section 6-A(2) of the Act. The Court observed that the Chakmas in that case, who were resident in Arunachal Pradesh, could not avail of the benefit of Section 6A of the Act which is a special provision for the citizenship of persons covered by the Assam accord in the present case, the Chakmas are seeking to obtain citizenship under Section 5(1)(a) of the Act, where the considerations are entirely different. That section provides for citizenship by registration. It says that the prescribed authority may, on receipt of an application in that behalf, register a person who is not a citizen of India, as a citizen of India if he/she satisfies the conditions set out therein. This provision is of general application and is not limited to persons belonging to a certain group only as in the case of Section 6-A. Section 5, therefore, can be invoked by persons who are not citizens of India but are seeking citizenship by registration. Such applications would have to be in the form prescribed by part II of the Citizenship Rules, 1956 (hereinafter called "The Rules"). Under Rule 7, such application has to be made to the Collector within whose jurisdiction the applicant is ordinarily resident. Rule 8 describes the authority to register a person as a citizen of India under Section 5(1) of the Act. It says that the authority to register a person as a citizen of India shall be an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Home Affairs, and also includes such officer as the Central Government may, by notification in the Official Gazette, appoint and in any other case falling under the Rules any officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Home Affairs, and also includes such other officer as the Central Government may, by notification in the Official Gazette, appoint. Rule 9 next enjoins the Collector to transmit every application received by him under Section 5(1)(a) to the Central Government through the State Government or the Union Territory administration, as the case may be, along with a report on matters set out in clauses (a) to (e) thereof. Rule 10 provides for issuance of a certificate to be granted to persons registered as citizens and Rules 11 and 12 provide for maintenance of registers. These are the relevant rules in regard to registration of persons as citizens of India.

18. From what we have said hereinbefore, there is no doubt, that the Chakmas who migrated from East-Pakistan (now Bangladesh) in 1964, first settled down in the State of Assam and then shifted to areas which now fall within the State of Arunachal Pradesh. They have settled there since the last about two and a half decades and have raised their families in the said State. Their children have married and they too have had children. Thus, a large number of them were born in the State itself. Now it is proposed to uproot them by force. The AAPSU has been giving out threats to forcibly drive them out to the neighbouring State which in turn is unwilling to accept them. The residents of the neighbouring State have also threatened to kill them if they try to enter their State. They are thus sandwiched between two forces, each pushing in opposite direction which can only hurt them. Faced with the prospect of annihilation the NHRC was moved, which, finding it impossible to extend protection to them, moved this Court for certain reliefs.

19. By virtue of their long and prolonged stay in the State, the Chakmas who migrated to, and those born in the State, seek citizenship under the Constitution read with Section 5 of the Act. We have already indicated earlier that if a person satisfies the requirements of Section 5 of the Act, he/she can be registered as a citizen of India. The procedure to be followed in processing such requests has been outlined in Part II of the Rules. We have adverted to the relevant rules hereinbefore. According to these rules, the application for registration has to be made in the prescribed form, duly affirmed, to the Collector within whose jurisdiction he resides. After the application is so received, the authority to register a person as a citizen of India, is vested in the officer named under Rule 8 of the Rules. Under Rule 9, the Collector is expected to transmit every application under Section 5(1)(a) of the Act to the Central Government. On a conjoint reading of Rules 8 and 9 it becomes clear that the Collector has merely to receive the application and forward it to the Central Government. It is only the authority constituted under Rule 8 which is empowered to register a person as a citizen of India. It follows that only that authority can refuse to entertain an application made under Section 5 of the Act. Yet it is an admitted fact that after receipt of the application, the Deputy Collector (DC) makes an enquiry and if the report is adverse, the DC refuses to forward the application; in other words, he rejects the application at the threshold and does not forward it to the Central Government. The grievance of the Central Government is that since the DC does not forward the applications, it is not in a position to take a decision whether or not to register the person as a citizen of India. That is why it is said that the DC or Collector, who receives the application should be directed to forward the same to the Central Government to enable it to decide the request on merits. It is obvious that by refusing to forward the applications of the Chakmas to the Central Government, the DC is failing in his duty and is also preventing the Central Government from performing its duty under the Act and the Rules.

20. We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human-being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human-being, he be a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, Constitutional and statutory, to be considered for being registered as citizens of India.

21. In view of the above, we allow this petition and direct the first and second respondents, by way of a writ of mandamus, as under:-

(1) the first respondent, the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or

drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of para-military or police force, and if additional forces are considered necessary to carry out this direction, the first respondent will request the second respondent the Union of India, to provide such additional force, and the second respondent shall provide such additional force as is necessary to protect the lives and liberty of the Chakmas;

(2) except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein;

(3) the quit notices and ultimatums issued by the AAPSU and any other group which tantamount to threats to the life and liberty of each and every Chakma should be dealt with by the first respondent in accordance with law;

(4) the application made for registration as citizen of India by the Chakma or Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and shall be forwarded by the Collector or the DC who receives them under the relevant rule, with or without enquiry, as the case may be, to the Central Government for its consideration in accordance with law; even returned applications shall be called back or fresh ones shall be obtained from the concerned persons and shall be processed and forwarded to the Central Government for consideration;

(5) while the application of any individual Chakma is pending consideration, the first respondent shall not evict or move the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf; and

(6) the first respondent will pay to the petitioner cost of this petition which we quantify at Rs. 10,000/- within six weeks from today by depositing the same in the office of the NHRC, New Delhi.

22. The petition shall stand so disposed of.

SCALE (PIL) 1981-97 1878

CENTRE FOR PUBLIC INTEREST LITIGATION *Petitioner*

VS

UNION OF INDIA AND OTHERS *Respondents*

CORAM: J.S. VERMA AND SUJATA V. MANOHAR, JJ.

PUBLIC INTEREST LITIGATION — STATE LARGESSE — ALLOTMENT OF RETAIL OUTLETS FOR PETROLEUM PRODUCTS — Exercise of discretion by Central Government in such allotments — Guidelines laid down and the Government directed to follow the same.

1. In this writ petition which has been brought in public interest, the exercise of discretion in allotment of retail outlets for petroleum products LPG Dealership and SKO Dealership by the Central Government is challenged. It is alleged that there are no guidelines to regulate the exercise of discretion in the matter of such allotments which results in exercise of the discretion arbitrarily .

Order dated March 31, 1995 in W.P. (C) No. 886 of 1993. [1998(2) SCALE 474]

2. After hearing the learned counsel for the parties, we requested the learned Attorney General to submit a draft of the proposed guidelines to regulate exercise of the discretionary power in the matter of such allotments in the light of the suggestions made on behalf of the petitioner at the hearing. The learned Attorney General submitted a draft of the proposed guidelines together with the general conditions on which the applicants may be chosen for making the allotments. In addition, the learned Attorney General also indicated certain details for being inserted in the brochure of guidelines for selection of dealers available with all the oil companies.

3. To ensure the exercise of discretion in making such allotments in conformity with the rule of law by excluding the likelihood of arbitrariness and minimising the area of discretion by regulating its exercise in accordance with settled norms and guidelines, we indicate herein these norms which would govern all future allotments. The norms/guidelines required to be followed thereafter in making all such allotments are as under:

Guidelines for Discretionary Allotments of Petroleum Products Agencies.

The following are the guidelines which are to be the guiding factors in discretionary allotments of dealership/ distributorship on compassionate grounds:

(1) Dependent of a person who has made supreme sacrifice for the nation, but has not been properly rehabilitated so far.

(2) Member of a family which has been a victim of unforeseen circumstances, like terrorist attack, earthquake, floods etc.

(3) Physically handicapped person.

(4) Defence/ paramilitary/ police personnel/ other Central/ State Government employees, who are permanently disabled on duty.

(5) Immediate next of kin, namely, widow, parents, children of those who lost their lives in abnormal circumstances.

(6) Eminent professionals like outstanding sportsmen, musicians, litterateurs etc. and women, of high achievements in distress.

(7) Individual cases of extreme hardship, which in the opinion of Governments are extremely compassionate and deserve sympathetic consideration in view of the special circumstances of the case at the given time.

(8) The number of discretionary allotments should not ordinarily exceed 10% of the average annual marketing plan of which allotments of retail outlets for petroleum products should normally exceed 5%.

GENERAL CONDITIONS

(1) He/she should be a citizen of India.

(2) He/she or any of his/her following close relatives (including step relatives) should not already hold a dealership of petroleum products of any oil company:

- (i) spouse
- (ii) father/mother
- (iii) brother
- (iv) son/daughter-in-law.

PROCEDURE

As regards the procedure to be followed for discretionary allotments the suggestions, are as under:

(i) Candidate will submit a proper application giving the complete bio-data indicating the name of spouse/ father, occupation, permanent address, annual income for the preceding year in respect of self, spouse and parents from all sources etc. enclosing documental evidence wherever necessary in support of their request and an affidavit verifying the given facts. Where allotments are sought on partnership basis, each partner will furnish the above information individually.

(ii) Application will be processed by the office in the light of the eligibility criteria and submitted through established channel for the orders of the Minister. The Hon'ble Minister must personally decide each case, and the order should be a speaking order. An unsuccessed applicant in the same category if he applies for it, shall be supplied copy of that order.

(iii) Necessary verification regarding caste, multiple normal income, etc. in respect of successful candidates will be done before issuing the Letter of Intent to the allottee.

(iv) If the information furnished by a candidate is subsequently found to be wrong/forged, allotment made on this basis will be cancelled.

TO BE INSERTED IN THE
BROCHURE OF GUIDELINES FOR
SELECTION OF DEALERS
THROUGH THE OIL
SELECTION BOARD

Discretionary Quota

A discretionary qouta will be earmarked for deserving cases on genuine compassionate grounds. This quota will be outside the 100 point roster to marketing plans and outside the purview of the Oil Selection Boards.

Candidates will submit a proper application to the Ministry, giving the complete bio-data indicating the name of spouse/father, occupation, permanent address, annual income for the preceding year in respect of self, spouse and parents from all sources enclosing documentary evidence wherever necessary in support of their request and an affidavit verifying the given facts.

Discretionary allotment will be made to a candidate only if he is a citizen of India. If he/she or any of his/her following close relatives (including step relatives) does not already hold a dealership of petroleum products of any oil company:

(i) spouse
(ii) father/mother
(iii) brother
(iv) son/daughter-in-law.

4. We hereby direct that the above-quoted norms/guidelines etc. shall be followed by the Central Government in making all such discretionary allotments of retail outlets for petroleum products, LPG Dealership and SKO Dealership, thereafter. A copy of this order be provided to every oil company by the Central Government for general information.

5. The writ petition stands disposed of in the above terms.

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